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STATEMENT OF INFORMATION

HEARINGS

BEFORE THE

COMMITTEE ON THE JUDICIARY

HOUSE OF REPRESENTATIVES

NINETY-THIRD CONGRESS

SECOND SESSION

PURSUANT TO

H. Res. 803

A RESOLUTION AUTHORIZING AND DIRECTING THE COMMITTEE
ON THE JUDICIARY TO INVESTIGATE WHETHER SUFFICIENT
GROUNDS EXIST FOR THE HOUSE OF REPRESENTATIVES TO
EXERCISE ITS CONSTITUTIONAL POWER TO IMPEACH

RICHARD M. NIXON

PRESIDENT OF THE UNITED STATES OF AMERICA

Book X

TAX DEDUCTION
FOR GIFT OF PAPERS



MAY-JUNE 1974

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FOREWORD

By Hon. Peter W. Rodino, Jr., Chairman,
Committee on the Judiciary

On February 6, 1974, the House of Representatives adopted by a vote of 410-4 the following House Resolution 803:

RESOLVED, That the Committee on the Judiciary acting as a whole or by any subcommittee thereof appointed by the Chairman for the purposes hereof and in accordance with the Rules of the Committee, is authorized and directed to investigate fully and completely whether sufficient grounds exist for the House of Representatives to exercise its constitutional power to impeach Richard M. Nixon, President of the United States of America. The committee shall report to the House of Representatives such resolutions, articles of impeachment, or other recommendations as it deems proper.

Beginning in November 1973, acting under resolutions referred to the Committee by the Speaker of the House and with a special appropriation, I had begun to organize a special staff to investigate serious charges against the President of the United States.

On May 9, 1974, as Chairman of the Committee on the Judiciary, I convened the Committee for hearings to review the results of the Impeachment Inquiry staff's investigation. The staff began its initial presentation the same day, in executive session, pursuant to the Committee's Impeachment Inquiry Procedures adopted on May 2, 1974.

By June 21, the Inquiry staff had concluded its initial presentation.

On June 25, the Committee voted to make public the initial presentation including substantially all of the supporting material

presented at the hearings. The Committee also voted to make public the President's response, which was presented to the Committee on June 27 and June 28 in the same form and manner as the Inquiry staff's initial presentation.

In addition to statements of information and evidentiary material regarding the Watergate break-in and its aftermath, ITT, dairy price supports, domestic surveillance, abuse of the IRS, and the activities of the Special Prosecutors, the staff also presented to the Committee written reports on President Nixon's income taxes, Presidential impoundment of funds appropriated by Congress, and the bombing of Cambodia.

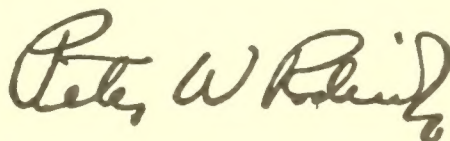
This volume contains the staff's report on the President's income taxes. The report and related materials are presented in four sections. Section one contains the report, footnoted with citations to supporting evidentiary material. Section two contains the supporting evidentiary material. The third section is an appendix of 13 documents obtained from the Internal Revenue Service or the Joint Committee on Internal Revenue Taxation by the Impeachment Inquiry staff. Section four contains materials regarding the President's taxes submitted to the Committee on behalf of President Nixon by his counsel, James St. Clair.

Every effort was made to preclude inferences in the presentation of material to the Committee by the Impeachment Inquiry staff. A deliberate and scrupulous abstention from conclusions, even by implication, was observed.

The Committee on the Judiciary is working to follow faithfully its mandate "to investigate fully and completely" whether or not sufficient grounds exist to recommend that the House exercise its constitutional power of impeachment.

I believe that the readers of these volumes will see that the Committee's primary effort in carrying out its mandate has been to obtain an objective, impartial presentation which will enable each Member of the Committee to make an informed judgment in fulfilling his or her constitutional responsibility.

I also believe that the publication of the record of these hearings will provide readers with a clear idea of the particulars of the investigation and that the proximity of the evidence will assure them that no statement of information is offered without supporting evidentiary material.

A handwritten signature in dark ink, reading "Peter W. Rodino". The signature is written in a cursive, flowing style with a large initial "P" and a long, sweeping underline.

July 1974

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REPORT RESPECTING DEDUCTION
TAKEN BY THE PRESIDENT FOR YEARS
1969 THROUGH 1972 FOR GIFT OF
PAPERS CLAIMED TO BE MADE
ON MARCH 27, 1969

1. Sequence of Events Respecting Deduction

After his election in November, 1968, President-elect Nixon paid a courtesy call on President Lyndon B. Johnson at the White House. President Nixon has stated that at that meeting he was advised by President Johnson to look into contributing some of his personal papers to the National Archives, and taking a tax deduction for the value of the papers contributed. ^{1/} At the same meeting, or soon thereafter, President Johnson or one of his staff gave to Mr. Nixon or one of his staff the name of Ralph Newman, who had appraised President Johnson's papers. ^{2/}

On December 19, 1968 Mr. Nixon met at his New York apartment with Richard Ritzel, one of his partners in the law firm of Nixon Mudge Rose Guthrie Alexander & Mitchell, and asked Ritzel to look into the possibility of Mr. Nixon's making a gift of this kind and taking the tax deduction thus made available. Ritzel concluded that a gift could be made, but that time was of the essence because the end of the year was approaching. Ritzel reported this conclusion to Mr. Nixon. On December 22, 1968 the President-elect told Ritzel to go ahead with the gift. ^{3/} Ritzel asked one of his partners, Pat Tannian, to draft Mr. Nixon's deed of gift. Tannian drafted two versions, one containing restrictions on access to the papers while Mr. Nixon was President, and the other containing no such restrictions. ^{4/}

Egil Krogh and Edward L. Morgan, who worked for John Ehrlichman on the administration transition staff (and who each later became deputy

counsel when Ehrlichman became Counsel to the President after the inauguration), were asked by Ehrlichman to assist Ritzel in the transfer of the papers. On December 27 or 28 Krogh flew to Key Biscayne, bearing the two versions of the deed of gift, and a covering memorandum to Mr. Nixon from Ritzel. In the memorandum Ritzel outlined the differences in the two deeds, noted the target figure of \$60,000 for a gift which had been suggested by Mr. Nixon's accountant, and suggested that Mr. Nixon sign both versions of the deed so that either could be used, depending on whether or not papers "which should be restricted from public perusal while you are the President" were selected by Newman for giving. ^{5/}

On the evening of December 28 Ritzel was telephoned at his New Jersey home by Mr. Nixon. In the conversation, which lasted about twenty minutes, they discussed Ritzel's memorandum -- in particular, the problem of whether public access to the papers should be restricted. Mr. Nixon said that he was going to execute the restrictive deed, and gave Ritzel authority to annex to that deed a description of the papers selected for the gift when Newman chose them. ^{6/}

On December 29 Krogh arrived in the Nixon Mudge law offices with the executed deed of gift. Morgan and Ritzel were present while Newman and Loie Gaunt, a long-time assistant to Rose Mary Woods, selected the papers for the gift. After the selection was completed, an exhibit describing those papers was drawn up and attached to the executed deed. The next day a representative of the General Services Administration, of which the National Archives is a division, countersigned the deed as "accepted." Mr. Nixon's papers were then transferred from the Nixon Mudge offices to a GSA

truck, which took them to a federal records center in New York City. ^{7/}

When the President's tax return for 1968 was prepared, the gift was valued by Newman at \$80,000. Of this, \$70,552.27 was deducted for tax year 1968, and \$9,447.73 was available as a deduction carryover for future years. ^{8/} Also, in accordance with Internal Revenue Service regulations, a statement was attached to the return, which included information as to the existence of any restrictions on the gift. It said in substance that the gift was free and clear with no rights remaining in the taxpayer. ^{9/}

After the Inauguration, on February 6, 1969, John Ehrlichman wrote a memorandum to the President on the subject of "Charitable Contributions and Deductions." Ehrlichman recited the 1968 gift of papers, and suggested that the President could continue to obtain the maximum charitable deduction of 30 percent of his adjusted gross income by first contributing to charities proceeds from the sale of the President's writings in an amount equal to 20 percent of his adjusted gross income. With respect to "the remaining 10 percent," Ehrlichman's memorandum noted that it would "be made up of a gift of your papers to the United States. In this way, we contemplate keeping the papers as a continuing reserve which we can use from now on to supplement other gifts to add up to the 30% maximum." There is a notation on the memorandum, apparently in the President's handwriting, which states "(1) good (2) Let me know what we can do on the foundation idea -- ." ^{10/} There is no reference in the February 6 memorandum to making a bulk gift of papers in the year 1969 which would be sufficient for the President's 30% charitable deduction for 1969 and succeeding years.

Both Ritzel and Morgan have told the staff that there were probably discussions during this time on the desirability of giving the remainder of the President's pre-presidential papers to the National Archives. They noted that this question had been discussed in 1968, but that there had been barely enough time for a one-year gift then, not to mention selecting papers for a massive gift. They did not recall any instructions from the President with respect to a bulk gift of papers. ^{11/}

In a February 28, 1969 response to earlier letters from Krogh, Ritzel noted that if Newman's appraisal of the 1968 gift proved to be "higher than anticipated, it will have to be taken into consideration in making any gifts this year." He also wrote, "If you will recall, it had not been our plan to give any of the Presidential papers, within the near future, to the Government since Newman made it quite clear to us that the volume of Vice Presidential papers which we had would undoubtedly take care of the deduction for a number of years, and the thought was that we would use the oldest first, with the hope that we would be able to get the full deduction for practically the entire life of the President." ^{12/} Ritzel's letter makes no mention of a bulk gift of the President's papers.

Morgan and Ehrlichman were with the Presidential party in Europe during the President's visit from February 23 to March 2, 1969. ^{13/} On March 11, Morgan and Charles Stuart, also of Ehrlichman's staff, met with Walter Robertson, Executive Director of the National Archives, and Daniel Reed, Assistant Archivist for Presidential Libraries. They discussed Presidential libraries, the transfer of the 1968 gift papers from New York to the Archives

in Washington, and adding an archivist to the White House staff. In addition, the Archives officials agreed to organize and inventory a large body of President Nixon's pre-presidential papers located in the New Executive Office Building, and to recommend appropriate disposition of this material.^{14/} After that meeting Archives personnel found that the space in the EOB was inadequate for doing archival work on the President's papers, and suggested that the papers be moved from the EOB to the Archives. Stuart wrote Dr. Reed on March 14, confirming that the logistics of the move had been arranged.^{15/}

On March 24 Stuart called and left a message for Reed, in which he stated that the papers at the EOB should be moved to the Archives and sorted there.^{16/} On March 26 and 27, the papers were moved from the Old and New EOB to the National Archives Building. Also on March 27 Morgan signed a "limited right to access," allowing Newman to work with the 1968 gift papers which had been moved from New York to the Archives on March 20.^{17/} Newman did this work at the Archives on April 8.

Newman first told the Joint Committee staff that on April 8, 1969, at the request of Frank DeMarco, who in early 1969 replaced Ritzel as the President's tax attorney, he had visited the area housing the papers delivered on March 26 and 27, and verified that there was sufficient volume to cover the \$500,000 requirement for a 1969 gift. After that interview, Newman was informed that Sherrod East, an Archives employee, who had escorted Newman at the Archives, stated that Newman had not seen the 1969 material on April 8. Newman thereafter stated that he checked his records, and discovered that his

first contact with DeMarco was in October, 1969 and that before that time he did not see the papers delivered on March 26 and 27.^{18/}

DeMarco insisted throughout the Joint Committee and IRS investigations that his first contact with Newman was in April 1969.^{19/} He told the Impeachment Inquiry Staff that when talking with the Joint Committee and the IRS he had not remembered a meeting at the White House on October 8, 1969. He told the staff that on that date he met with Morgan and Roger Barth, Assistant to the Commissioner of the Internal Revenue Service. Morgan suggested to him that he contact Newman. On October 31, 1969 he apparently contacted Newman for the first time.^{20/}

On April 21, 1969 Morgan had a breakfast meeting with Herbert Kalmbach and Frank DeMarco at the Century Plaza Hotel in Los Angeles, California. DeMarco told the staff Morgan had telephoned him early in April to discuss coming to California, and mentioned that the President had made a gift of his papers to the Archives.^{21/} Morgan does not remember such a telephone conversation, but thinks that he must have spoken to DeMarco before leaving Washington.^{22/} They both remember, however, that they met for breakfast, drove to San Clemente to see the property, and then drove to the Kalmbach, DeMarco, Knapp & Chillingworth office in Newport Beach. DeMarco first told the Joint Committee staff that a deed was not executed on this day. Morgan's initial recollection was that a deed was executed, and now they both state that on April 21, 1969 Morgan, as Deputy Counsel to the President, signed a deed for the 1969 gift of papers, dated March 27, 1969, at the Newport Beach office.^{23/} Morgan does not recall who had given him the authority to sign the

deed on April 21, 1969 and he states that quite possibly he assumed the authority relying on DeMarco as the President's tax attorney. He had never previously signed a deed on behalf of the President.^{24/} DeMarco told the staff that he based the 1969 deed on the 1968 deed, which he received from either Morgan or Kalmbach. Neither Morgan nor Kalmbach remembers sending it to DeMarco.^{25/} DeMarco also said that only one copy of the deed was executed in 1969, and that at all times he kept that copy in his personal custody.^{26/}

DeMarco told the staff that he had expected Morgan to bring with him some form of Archives receipt for the papers, or a description of them. When he discovered that Morgan did not have it, he typed a temporary "Schedule A" to the deed, "just to have something." Morgan does not remember any conversation about receipts for the papers or a description of them.^{27/} After the meeting in Newport Beach, Morgan was driven to Los Angeles, and flew out of California.

Both DeMarco and Arthur Blech, an accountant retained by the Kalmbach firm, told the staff of a conversation between them early in May, 1969. In that conversation, DeMarco posed a hypothetical question of a client with an income in the \$250,000 - \$300,000 range, who had given a gift worth \$500,000. He wanted to know for how many years the carryover would be good. After doing the calculations, Blech asked who the donor was, and DeMarco replied that it was the President. Blech told the staff that he dated and kept his notes of this conversation, but that he could not find them.^{28/}

In Washington on April 21, 1969, the President sent to Congress his proposals for tax reform. The proposals did not include provisions

affecting charitable deductions for gifts of personal papers.^{29/} On May 27, 1969, the Committee on Ways and Means announced in a press release that it was considering eliminating the charitable deduction for "all gifts of works of art, collections of papers, and other forms of tangible personal property." On July 25, 1969 the Ways and Means Committee announced that it had decided to recommend this action to the House.^{30/}

On August 2 the Tax Reform Act of 1969 was reported out of the Ways and Means Committee to the House. That Committee recommended that the proceeds from the sale of collections of private papers be taxed as ordinary income (effective after July 25, 1969), and that the charitable deduction for gifts of collections of private papers be eliminated (effective after December 31, 1969). The bill containing these provisions was passed by the House on August 7, 1969.^{31/}

In a memorandum dated May 27, 1969 a National Archives consultant retained to work on the President's papers noted that the papers delivered to the Archives ". . . for the most part are not yet deeded to the United States [F]urther work should await some further clarification of White House wishes and intentions. . . . "^{32/}There are no National Archives memoranda which indicate that a gift of papers had been made by the President in 1969.^{33/}

On June 16, 1969 Ehrlichman wrote two memoranda to Morgan, which posed a number of questions relating to the President's taxes. In one of them he asked, "Will you please have someone carefully check his salary withholding to see if it takes into account the fact that he will be making

a full 30% charitable deduction." ^{34/} Morgan apparently referred the questions to IRS Commissioner Randolph Thrower, and they were answered by a memo, dated July 16, 1969, from Roger Barth, assistant to Commissioner Thrower, to Morgan. ^{35/} No mention is made in either the Ehrlichman or the Barth memoranda that the President had made a bulk gift of papers in March 1969.

On November 3, 1969 Newman began his work at the Archives on the papers delivered March 26-27. This was apparently occasioned by a meeting among DeMarco, Morgan and Barth on October 8, ^{36/} and a telephone conversation from DeMarco to Newman on October 31, in which DeMarco requested Newman to go to the Archives and tell him how much was there. ^{37/} On November 7, 1969 Newman sent to the President, with copies to DeMarco and Morgan, a preliminary appraisal of the President's pre-presidential papers, valuing them at \$2,012,000. ^{38/}

Newman told the staff that on November 16, 1969 he was in Washington with his wife. A friend, who was a military aide at the White House, arranged for the Newmans to be invited to a White House prayer breakfast on that morning. After the service, Newman said that he and his wife stood in the receiving line. When they reached the President, Newman introduced himself and asked the President if he had received Newman's preliminary appraisal. The President replied that he did receive the appraisal and stated that he did not believe the figure could be so high. Newman told the President that the figure was a conservative estimate. ^{39/}

Newman returned to the Archives on November 17-20 and December 8, 1969 to continue his examination of the President's papers. During that time he worked almost exclusively on the "General Correspondence" file of the President. ^{40/}

On November 21, 1969 the Senate Finance Committee reported out its version of the Tax Reform Act, recommending that the charitable deduction for gifts of private papers be eliminated for gifts made after December 31, 1968. ^{41/} This effective date was retained in the bill when it passed the Senate on December 11, 1969. ^{42/} On November 26 and December 8, 1969, Edwin S. Cohen, Assistant Secretary of the Treasury for Tax Policy, wrote memoranda to Peter Flanigan, Assistant to the President, on the sections of the proposed tax act which would eliminate charitable deductions for gifts of private papers. In the November 26 memorandum Cohen noted, "if the effective date of the provisions relating to contributions of papers is changed back to that in the House bill (from Dec. 31, 1968 to Dec. 31, 1969), then a contribution could be made in December, 1969 and deducted this year up to 30% of income. . . . " ^{43/}

On December 22, 1969, the Conference Report on the Tax Reform Act of 1969 recommended an effective date for the elimination of the charitable deduction for gifts of papers of July 25, 1969. This effective date was adopted by both Houses of Congress on the same day. ^{44/} The President signed the bill into law on December 30, 1969. ^{45/}

On December 24, 1969 Newman telephoned DeMarco and asked him whether there was anything more to do in light of the deduction for gifts of

papers being eliminated effective July 25, 1969. Newman's telephone bills reflect a call to DeMarco's office on this date. According to Newman, DeMarco told him that there was nothing more for him to do.^{46/} Newman told the staff that as of the end of 1969 he did not know that a gift of papers had been made by the President. "I ~~thought~~ he'd blown it," he said.^{47/} DeMarco told the staff that he does not recall the December 24 telephone conversation with Newman.^{48/}

On January 9 and February 2, 1970 Dr. James Rhoads, Archivist of the United States, wrote the Administrator of General Services that the "second installment" of the President's gift of papers was not given in 1969.^{49/} On March 3, 1970 Ralph Newman wrote to Frank DeMarco, asking "what the procedure will be with reference to the Nixon papers . . . " in light of the Tax Reform Act of 1969. Newman noted that the President still had material in the Archives which was not affected by the section of the bill eliminating deductions for gifts of papers.^{50/} DeMarco told the staff that during this period he repeatedly called Newman, asking him to finish the appraisal, and that he also called Morgan, requesting his aid in having Newman do the work.^{51/} Neither Newman nor Morgan remembers such calls.^{52/}

On March 27, 1970 Newman said he was called by DeMarco, who told him that the President had made a bulk gift of papers in 1969 and this was accomplished when the papers were delivered to the Archives on March 27, 1969. Newman has told the staff he was surprised when DeMarco told him on March 27, 1970 that the President had made a gift of papers a year earlier.

DeMarco told Newman during that conversation that he needed a description of papers worth around \$500,000. Newman told DeMarco that he had selected some materials in late 1969, but would have to go back to the Archives for an additional selection. He called Mary Walton Livingston, an Archives employee, and asked her to select additional items to bring the value up to about \$550,000. About an hour later, he received a call from Mrs. Livingston, who described several series of papers to him. Newman telephoned this information to DeMarco and later in the day sent a letter to Mrs. Livingston enclosing a description of the items. ^{53/}

Newman told the staff that in his March 27, 1970 letter to Mrs. Livingston he was careful to say that the items were "designated as a gift by Richard Milhous Nixon in 1969." He said that this is what he had been told by DeMarco, and that he wanted the record to reflect what he had been told. He said that his letter made no reference to his conversations of that day with Mrs. Livingston, or her selection of a portion of the materials for the gift, because he had already thanked her on the phone for her work. ^{54/}

On April 3 Newman called DeMarco and said that he was preparing an appraisal document and would mail it out shortly. Newman did prepare an appraisal document and sent it to DeMarco on April 6 or 7. ^{55/} Included in that document is an affidavit by Newman dated April 6, 1970 which states that Newman examined the papers constituting the 1969 gift on April 6 through 8, November 3 and 17 through 20 and December 8, 1969. ^{56/} Newman stated to the staff that this affidavit was inadvertently incorrect in stating that he examined on April 6 through 8 the papers constituting the 1969 gift. The first time that he viewed the papers delivered to the Archives on March 26

and 27, 1969 was on November 3, 1969.

On April 6 Newman called Mrs. Livingston. She reported to the Joint Committee staff that Newman said his March 27 letter was the only deed of gift the Archives would receive, and that he wanted an acknowledgment of that letter. She also told the Joint Committee staff that Newman said it would be better for everyone, including the White House, "if all dealings on this point would stay between the two of us." Newman denies stating on April 16 that his March 27 letter would be the only deed of gift the Archives would receive. He acknowledges that he may have said to Mrs. Livingston that "all dealings on this point should stay between the two of us," but explained that he meant that the Archives should not make any public announcement of the President's gift. On April 9, Newman called Mrs. Livingston again. She read him a draft reply to his letter of March 27, 1970. That draft made no acknowledgment of a gift, but simply listed some pre-presidential papers, and noted their date of delivery to the Archives. Newman stated that her letter was sufficient. 57/

DeMarco has stated that after his March 27 telephone call from Newman, he dictated a "Schedule A" to the deed to replace the temporary schedule which he had typed himself on April 21, 1969. He said that on April 7 he noticed that the typestyle, and the color and texture of the paper of the schedule, were different from the type and paper used for the deed executed on April 21, 1969. DeMarco asked his secretary, LaRonna Kueny, to copy the original document so that the appearance of the deed and the schedule would be the same. 58/ Mrs. Kueny has testified before the California

Secretary of State that, after typing an original deed in April 1969, she retyped the document in late 1969 or early 1970.^{59/}

On April 8, DeMarco received the appraisal from Newman, and took it to Blech's office, to attach it to the income tax return. According to DeMarco, at Blech's suggestion, DeMarco also prepared a description sheet to conform with IRS regulations, which stated, "Restrictions: None. The gift was free and clear, with no rights remaining in the taxpayer."^{60/} After Blech assembled the return, DeMarco flew with it to Washington on April 9.

On April 10, 1970 DeMarco went to Morgan's office in the Executive Office Building. DeMarco has stated that he asked Morgan to "re-execute" the deed which his secretary had retyped, and Morgan did so.^{61/} In a written statement prepared for the White House in August, 1973, Morgan made no mention of signing a deed of gift in April, 1970.^{62/} In his interview with the Joint Committee staff, he conceded that the signature on the deed was his, but said that he did not recall signing any deed a second time, nor signing anything on April 10, 1970.^{63/} He told the Judiciary Committee staff that he now recalls being called out of a meeting by his secretary, going to his office where at DeMarco's request he executed copies of a deed previously executed by him, and returning to the meeting. He does not know whether that event occurred on April 10, 1970.^{64/}

It should be noted that the deed dated March 27, 1969 in the GSA files is a "duplicate original," that is, a photocopy of an original document which contains autograph signatures and seals. During the early stages of

the Joint Committee and IRS investigations, National Archives personnel pointed out that the Schedule A attached to the deed -- which could not have been composed until March 27, 1970 because some of the papers reflected on the schedule were not selected until that date -- contained the same photocopy marks as the deed itself, which on its face purported to be executed in 1969.^{65/} DeMarco, in a letter dated August 22, 1973 to Coopers and Lybrand, had stated that a deed was executed on April 21, 1969, and did not mention a re-execution. Morgan, in an August 14, 1973 memorandum to Douglas Parker, an attorney at the White House, emphasized his execution of a deed on April 21, 1969, and did not mention a re-execution.^{66/} To the Inquiry staff's knowledge, none of the principals involved in the President's deduction for the gift of papers described the re-execution of a deed in 1970 until Archives personnel examined the "duplicate original" and it became apparent that that document could not have been executed in April, 1969.

DeMarco stated that he had an appointment with the President for 12:15 on April 10. He met Kalmbach, his law partner, outside the President's Oval Office, and at 12:20 they were ushered in to see the President. They chatted about California politics and the law business for about five minutes. Then DeMarco explained to the President the double-entry books and the other aspects of the record-keeping system which he and Blech had set up for the President.

Turning to the tax return, DeMarco pointed to the line on the first page of the return showing the refund due the President and said, "That is the bottom line." The President said, "That's fine, that's fine." Then DeMarco explained to the President the major items in the tax return, aside from his salary: the nonrecognition of gain on the sale of his New York

apartment, the deductions taken for interest, and pointed to the appraisal by Newman saying, "This, of course, is the appraisal supporting the deduction for the papers which you gave away." The President's response was, "That's fine."

DeMarco said that there was no discussion about the deed giving the papers to the United States. DeMarco told the President that the gift of papers would be a "tax shelter" for several years. DeMarco stated there was no in-depth analysis of the tax return while he was with the President, but he said there was no question the President knew he was getting a refund and that a basis for the refund was the deduction taken for the gift of papers.

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The President signed the return in the presence of DeMarco and Kalmbach and chatted for a few minutes about items other than the tax return. DeMarco told the President that he needed Mrs. Nixon's signature on the return. The President called Mrs. Nixon and told her that DeMarco and Kalmbach were coming up. Kalmbach and DeMarco were escorted to the family quarters to see Mrs. Nixon. She asked, "Where do I sign?" and signed it in the appropriate space. She then asked DeMarco and Kalmbach to help pick out one of two busts of General Eisenhower which had been presented to the White House.

After leaving Mrs. Nixon, DeMarco and Kalmbach went back to Morgan's office. Morgan, Barth and Clinton Walsh, the chief of the Audit Section of the IRS, were there to receive the President's return. Barth and Walsh looked over the return, checked to see that it was signed, put it back in its envelope and left.

About two weeks later in April, DeMarco received a telephone call from Barth, who said that the 1969 return had been checked and approved, and that a refund check was being issued on that day. ^{68/}

2. Sequence of Events Respecting the Reopening of the President's Returns

Donald C. Alexander, Commissioner of the Internal Revenue Service, told the Impeachment Inquiry staff that after he saw articles in the press and other indications of public interest in the President's income taxes, and after the President himself dealt with the subject in a press conference in November 1973, he raised in his own mind whether the audit of the President's returns for 1971 and 1972 had been "in depth." After considering the matter, he told Secretary of the Treasury George Shultz, in a meeting on November 28, 1973, that he was going to reopen the audit of the President's returns. The Secretary told him to go ahead, and said that he (Mr. Shultz) would inform General Alexander Haig, Assistant to the President, of this fact.

Alexander said that he had reached the decision to reopen the audit on his own. He said he decided to have the IRS examine the President's tax returns because the information which had been reported would have caused the examination of the returns of any other taxpayer. Alexander stated that he had discussed this matter with no one before informing Mr. Shultz of his decision. He said that he did not want to have to put the Secretary on the spot by asking him to make the decision, but felt obliged to inform him.

On the afternoon of November 28, 1973, or on the following day, Alexander arranged for Raymond F. Harless, the Deputy Commissioner, to meet with him on Monday, December 3. At that meeting, they looked at the President's returns. Harless then assembled an in-house audit team, which met with the Commissioner on December 4. On December 5, 1973 Alexander met with an aide and the Baltimore District Director, whose jurisdiction includes Washington, D.C. On December 7, 1973, letters were hand delivered to the White House notifying President and Mrs. Nixon that their federal income tax returns for the years 1970, 1971 and 1972 would be re-examined.

Alexander said that on December 7 the White House requested copies of the President's tax returns; they were sent over that evening. On December 8 the President wrote to Chairman Wilbur Mills asking the Joint Committee on Internal Revenue Taxation to examine his tax returns for the years 1969-1972 in order to answer questions which had been raised in the press concerning his personal finances as President. This letter was made public. There was no public announcement that on December 7 the President had been officially notified by the Internal Revenue Service that his tax returns would be audited.

On February 4, 1974, Referral Reports for Potential Fraud Cases were submitted by the Audit Division, Baltimore District, to the Intelligence Division, Baltimore District, naming Frank DeMarco, Ralph Newman, and Edward Morgan as potential subjects. DeMarco, Newman and Morgan were placed under full scale investigation by the Intelligence Division, Baltimore District, on February 20, 1974.

On March 28, 1974, it was recommended to the District Director, Baltimore District, that the true story concerning the gift of the President's papers and the preparation of his 1969 income tax return could only be arrived at by a Grand Jury proceeding. The report recommending this action, signed by William N. Jackson, Group Manger "01", Baltimore District Office, names DeMarco, Newman and Morgan as the subjects of the investigation. On April 2, 1974 this report was referred to the office of the Special Prosecutor for possible action.

The Internal Revenue Service notified President and Mrs. Nixon on April 2, 1974, that an adjustment of their tax liability was necessary for the years 1970, 1971 and 1972. A copy of the audit report justifying a tax deficiency of \$271,148.72 and a five per cent negligence penalty of \$13,557.44 was enclosed. Also sent to President and Mrs. Nixon was a report on tax year 1969, which noted a tax deficiency of \$148,080.97. In his covering letter, Gerald G. Portney, the new Baltimore District Director, noted that there was no legal obligation to pay the 1969 deficiency. The total deficiency for the years 1969 through 1972, including the negligence penalty for 1970 through 1972, was \$432,787.13. On April 3, 1974 the White House issued a statement that the President has "today instructed payment of the \$432,787.13 set forth by the Internal Revenue Service, plus interest."

On April 17, 1974, the President and Mrs. Nixon paid by check the amount of deficiency and penalty for 1970, 1971 and 1972, totalling \$284,706.16. On June 19, 1974 the staff was informed by William E. Williams, Deputy Commissioner of the Internal Revenue Service, that the President had

not yet paid the 1969 deficiency of \$148,080.97 and that no date has been set for such payment. Commissioner Williams also stated that the IRS has been in contact with representatives of the President and it is the impression of the IRS that the President is considering the payment of the 1969 deficiency.

* * *

In connection with the preparation of this report the Impeachment Inquiry Staff has interviewed Frank DeMarco (May 29 and May 30, 1974); Arthur Blech (May 30, 1974); Ralph Newman (June 7, 1974); Richard Ritzel (June 10, 1974); Donald C. Alexander (June 13, 1974) and Edward L. Morgan (June 15, 1974).

* * *

Included in this volume as an appendix to the report are the following documents, obtained by the Impeachment Inquiry Staff from the Internal Revenue Service or the Joint Committee on Internal Revenue Taxation:

1. Photocopy of November 28, 1973 diary notes of IRS Commissioner Donald C. Alexander.
2. Reopening Memorandum dated December 7, 1973.
3. Letters dated December 7, 1973 from William D. Waters, District Director, Baltimore District, to President and Mrs. Nixon.
4. Section of IRS Audit Report recommending fraud referral report.
5. Referral Reports for Potential Fraud cases, dated February 4, 1974.

6. Memorandum dated March 22, 1974, by Robert Browne, Chief, Intelligence Division, Baltimore District Office, entitled "Consideration of the Assertion of the 50% Civil Fraud Penalty," from IRS files.

7. Report dated March 28, 1974, by William N. Jackson of the IRS Intelligence Division recommending use of a grand jury proceeding.

8. Letter from Commissioner Donald C. Alexander to Special Prosecutor Leon Jaworski, dated April 2, 1974.

9. Letter dated April 2, 1974, from Gerald G. Portney, District Director, Baltimore District to President and Mrs. Nixon.

10. Income Tax audit changes, dated April 2, 1974, for 1969 through 1972.

11. Section of IRS Audit Report recommending assessment of negligence penalty.

12. Questions for President Nixon, with Joint Committee staff transmittal letter dated March 22, 1974.

13. IRS Memorandum for the Record dated March 22, 1974. Attached are the following memoranda: from John Ehrlichman to Herbert Kalmbach, dated August 12, 1969; from Roger Barth to Edward L. Morgan, dated July 16, 1969; and from John Ehrlichman to Edward L. Morgan, dated June 16, 1969.

FOOTNOTES

- 1.1 Staff of Joint Committee on Internal Revenue Taxation, Examination of President Nixon's Tax Returns for 1969 through 1972 (Joint Committee Report), H. R. Rep. No. 93-966, 11.
- 1.2 President Nixon news conference, November 17, 1973, 9 Presidential Documents 1345, 1349-50.
- 1.3 President Nixon news conference, February 25, 1974, 10 Presidential Documents 250, 256.
- 2.1 Ralph Newman interview, HJC, June 7, 1974, 5.
- 2.2 Richard Ritzel interview, HJC, June 10, 1974, 1, 2.
- 3.1 Joint Committee Report, 11.
- 3.2 Richard Ritzel interview, HJC, June 10, 1974, 1, 2.
- 4.1 Richard Ritzel interview, HJC, June 10, 1974, 3.
- 5.1 Memorandum from Richard Ritzel to President-elect Nixon, December 27, 1968 (received from Joint Committee).
- 5.2 Chattel deed from Richard M. Nixon to the United States of America, December 30, 1968, Joint Committee Report, A-3-9.
- 5.3 Draft deed not used by the President (received from Joint Committee).
- 5.4 Joint Committee Report, 12.
- 6.1 Richard Ritzel interview, HJC, June 10, 1974, 4.
- 7.1 Joint Committee Report, 12.
- 7.2 Richard Ritzel interview, HJC, June 10, 1974, 4-5.
- 8.1 Joint Committee Report, 12.
- 9.1 Joint Committee Report, 42.
- 10.1 Memorandum from John Ehrlichman to the President, February 6, 1969, Joint Committee Report, A-155-56.
- 11.1 Richard Ritzel interview, HJC, June 10, 1974, 5.
- 11.2 Edward L. Morgan interview, HJC, June 15, 1974, 8, 10, 13-15.

- 12.1 Letter from Richard Ritzel to Egil Krogh, February 28, 1969, Joint Committee Report, A-157-58.
- 13.1 Edward L. Morgan interview, HJC, June 15, 1974, 14.
- 13.2 President Nixon remarks, February 23 and March 2, 1969, 5 Presidential Documents 309, 356.
- 14.1 Joint Committee Report, 55-56.
- 14.2 Memorandum from National Archives files, March 21, 1969, and letter from Edward L. Morgan to Daniel Reed, March 13, 1969, Joint Committee Report, A-188-89.
- 15.1 Joint Committee Report, 56-57.
- 15.2 Letter from Charles Stuart to Daniel Reed, March 14, 1969, Joint Committee Report, A-190.
- 16.1 Notes from phone call to Daniel Reed, March 24, 1969, and covering memorandum, January 11, 1974, Joint Committee Report, A-192-94.
- 17.1 Letter from Daniel Reed to Edward L. Morgan, March 27, 1969, Joint Committee Report, A-195.
- 17.2 Limited right of access prepared by Edward L. Morgan for Ralph Newman, March 27, 1969, Joint Committee Report, A-303-05.
- 18.1 Joint Committee Report, 61-64.
- 19.1 Joint Committee Report, 64-66.
- 20.1 Frank DeMarco interview, HJC, May 29 and May 30, 1974, 9-11. (see nn. 36 and 37)
- 21.1 Frank DeMarco interview, HJC, May 29 and May 30, 1974, 2-3.
- 21.2 Memorandum from Frank DeMarco to Laurence Woodworth, Chief of Staff, Joint Committee, February 21, 1974, Joint Committee Report, A-163-65.
- 22.1 Edward L. Morgan interview, HJC, June 15, 1974, 15.
- 22.2 Joint Committee Report, 48-49.
- 23.1 Joint Committee Report, 87-90.
- 23.2 Memorandum from Edward L. Morgan to Douglas Parker, August 14, 1973, Joint Committee Report, A-159-62.
- 23.3 Memorandum from Frank DeMarco, Jr. to Laurence Woodworth, February 5, 1974, Joint Committee Report, A-163, A-169-71.

- 23.4 Herbert Kalmbach statement before California Secretary of State, February 21, 1974, 9 (received from California Secretary of State).
- 23.5 Frank DeMarco statement before California Secretary of State, January 30, 1974, 15-17 (received from California Secretary of State).
- 24.1 Joint Committee Report, 87-90.
- 24.2 Edward L. Morgan interview, HJC, June 15, 1974, 18.
- 25.1 Frank DeMarco interview, HJC, May 29 and May 30, 1974, 5.
- 25.2 Joint Committee Report, 90-91.
- 25.3 Edward L. Morgan interview, HJC, June 15, 1974, 17.
- 26.1 Frank DeMarco interview, HJC, May 29 and May 30, 1974, 5-6.
- 27.1 Frank DeMarco interview, HJC, May 29 and May 30, 1974, 5-6.
- 27.2 Edward L. Morgan interview, HJC, June 5, 1974, 17.
- 27.3 Schedule "A" allegedly prepared by DeMarco, Joint Committee Report, A-187.
- 28.1 Joint Committee Report, 51-52.
- 28.2 Frank DeMarco interview, HJC, May 29 and May 30, 1974, 7-8.
- 28.3 Arthur Blech interview, HJC, May 30, 1974, 2-3.
- 29.1 House Ways and Means Committee Hearings "Tax Reform, 1969," Part 14, April 22, 1969, 5047-49.
- 29.2 Memorandum from Paul Oosterhuis to Laurence Woodworth, December 28, 1973 (received from Joint Committee).
- 30.1 Wilbur Mills news releases, May 27, 1969 and July 25, 1969.
- 31.1 House Report 91-413, Tax Reform Act of 1969, 1645, 1700-02, 1800-01.
- 31.2 H. R. 13720 as passed by House, August 7, 1969, §§ 201(c), 201(d), 513.
- 32.1 Memorandum from Sherrod East to Assistant Archivist, NL, May 27, 1969, Joint Committee Report, A-220-23.
- 33.1 Joint Committee Report, 69, 76-77.
- 34.1 Memorandum from John Ehrlichman to Edward L. Morgan, June 16, 1969 (received from Joint Committee).

- 34.2 Memorandum from John Ehrlichman to Edward L. Morgan, June 16, 1969 (received from Joint Committee).
- 35.1 Memorandum from Roger Barth to Edward L. Morgan, July 16, 1969 (received from Joint Committee).
- 36.1 Frank DeMarco interview, HJC, May 29 and May 30, 1974, 9-11.
- 37.1 Joint Committee Report, 70.
- 37.2 Letter from Ralph Newman to Frank DeMarco, October 31, 1969, Joint Committee Report, A-186.
- 38.1 Letter from Ralph Newman to President Nixon, with appraisal, November /, 1969, Joint Committee Report, A-233-38.
- 38.2 Letter from Ralph Newman to Frank DeMarco, November 7, 1969, Joint Committee Report, A-263.
- 39.1 Ralph Newman interview, HJC, June 7, 1974, 10-11.
- 40.1 Joint Committee Report, 70-75.
- 41.1 Senate Report 91-552, Tax Reform Act of 1969, 1645, 2027, 2109-12, 2233-34.
- 42.1 H.R. 13720 as passed by the Senate, December 11, 1969, §§ 201(a), 514.
- 43.1 Letter from Edwin Cohen to Laurence Woodworth, February 1, 1974 (received from Joint Committee).
- 43.2 Memorandum from Edwin Cohen to Peter Flanigan, November 26, 1969, 4 (received from Joint Committee).
- 43.3 Memorandum from Edwin Cohen to Peter Flanigan, December 8, 1969 (received from Joint Committee).
- 44.1 Conference Report 91-782, 1645, 2392, 2408, 2432-33.
- 45.1 Tax Reform Act of 1969 (P.L. 91-172), §§ 201, 514.
- 46.1 Joint Committee Report, 75.
- 46.2 Ralph Newman interview, HJC, June 7, 1974, 12-13.
- 47.1 Ralph Newman interview, HJC, June 7, 1974, 13.
- 48.1 Frank DeMarco interview, HJC, May 29 and May 30, 1974, 13.

- 49.1 Memorandum from the Archivist of the United States to the Administrator, General Services Administration, January 9, 1970, Joint Committee Report, A-265-66.
- 49.2 Memorandum from the Archivist of the United States to the Administrator, General Services Administration, February 2, 1970, Joint Committee Report, A-267-70.
- 50.1 Letter from Ralph Newman to Frank DeMarco, March 7, 1970, Joint Committee Report, A-272.
- 51.1 Frank DeMarco interview, HJC, May 29 and May 30, 1974, 13.
- 52.1 Ralph Newman interview, HJC, June 7, 1974, 14.
- 52.2 Edward L. Morgan interview, HJC, June 15, 1974, 21.
- 53.1 Joint Committee Report, 79-84.
- 53.2 Letter from Ralph Newman to Mary Livingston, March 27, 1970, Joint Committee Report, A-273-74.
- 53.3 Ralph Newman interview, HJC, June 7, 1974, 14.
- 54.1 Ralph Newman interview, HJC, June 7, 1974, 14.
- 55.1 Ralph Newman interview, HJC, June 7, 1974, 15.
- 56.1 Ralph Newman affidavit, April 6, 1970, Joint Committee Report, A-282.
- 57.1 Joint Committee Report, 82-83.
- 57.2 Letter from Mary Livingston to Ralph Newman, April 9, 1970, Joint Committee Report, A-278-79.
- 57.3 Ralph Newman interview, HJC, June 7, 1974, 15.
- 58.1 Joint Committee Report, 91-92.
- 58.2 Frank DeMarco interview, HJC, May 29 and May 30, 1974, 16-17.
- 59.1 LaRonna Kueny statement before California Secretary of State, January 24, 1974, 16-17 (received from California Secretary of State).
- 60.1 Frank DeMarco interview, HJC, May 29 and 30, 1974, 20.
- 60.2 Arthur Blech interview, HJC, May 30, 1974, 4.
- 60.3 Richard M. and Patricia R. Nixon Charitable Deduction Claimed, 1969, Joint Committee Report, A-699.

- 61.1 Joint Committee Report, 91-92.
- 61.2 Memorandum from Frank DeMarco to Laurence Woodworth, February 5, 1974, Joint Committee Report, A-163, 179-80.
- 62.1 Joint Committee Report, A-159, 162.
- 63.1 Joint Committee Report 92-93.
- 64.1 Edward L. Morgan interview, HJC, June 15, 1974, 21.
- 65.1 Joint Committee Report, 85.
- 66.1 Letter from Frank DeMarco to Coopers & Lybrand, August 22, 1973, Joint Committee Report, A-10-12.
- 66.2 Memorandum from Edward L. Morgan to Douglas Parker, August 14, 1973, Joint Committee Report, A-159-62.
- 67.1 1969 Federal Income Tax Return of Richard M. and Patricia R. Nixon, Joint Committee Report, A-687-714.
- 68.1 Frank DeMarco interview, HJC, May 29 and May 30, 1974, 18-20.

FOOTNOTES

mittee. The Joint Committee staff did not examine the tax returns of the President for the years prior to 1969 except to review the effect any of the items on the prior years' returns may have on the tax returns under examination.

The following is a summary of those procedures followed by President Nixon's representatives for his gift of papers in 1968. A full discussion of the staff view on whether this gift is deductible for tax purposes is discussed in Section 5 of this report.

Procedures followed for 1968 gift

First consideration of 1968 gift.—According to public statements made by President Nixon, at a meeting he had with President Johnson after the election in late November or early December 1968, President Johnson told him that he could obtain tax deductions for gifts of his papers. John Ehrlichman told the staff that President Johnson gave President-elect Nixon the name of an appraiser, Ralph Newman, whom he had used.²

People assigned to work on gift.—Richard Ritzel, President Nixon's former law partner at what is now Mudge, Rose, Guthrie & Alexander, told the staff that on December 15 or 16, 1968, he was asked by President-elect Nixon to look into the possibility of making a gift of papers in 1968. Mr. Ehrlichman told the staff that he was also asked by Mr. Nixon to look into the desirability of making a gift of papers, and Mr. Ehrlichman assigned Edward L. Morgan and Egil Krogh of his staff to this task.

Decision to make a gift.—Mr. Ritzel told the staff that on December 22, 1968, he met with President-elect Nixon and reported that it was feasible to make a gift but that, since it was close to the end of the year, time would be a problem. Mr. Nixon told him to go ahead.

Determination of amount of gift.—Mr. Ritzel told the staff that an accountant with the firm handling Mr. Nixon's taxes at that time called him and said that they would need approximately \$60,000 to use up the maximum deduction allowable for 1968 (30 percent of Mr. Nixon's adjusted gross income). Mr. Ritzel said that he came up with a figure of \$80,000 for the size of the gift because he wanted to make sure that they had enough for the maximum deduction. Mr. Ritzel said that a decision was made not to make a larger gift with a larger carryover at that time because Mr. Nixon was thinking of assigning to charity income from certain royalties which he believed might not be appropriate for him to receive while serving as President. Mr. Ritzel said that for this reason, and because of the short time period during which they had to make the arrangements for the gift, they decided only to make a gift slightly larger than that needed to use up the maximum deduction for 1968 and to wait for the future for other gifts.

Segregation of material for gift.—The pre-Presidential Nixon papers were stored in a warehouse near the offices of Mudge, Rose in New York. During the week of December 23, 1968, a number of boxes of these papers were transported from the warehouse to the offices of the law firm. On December 26 and 27, the boxes of papers were reviewed to isolate those that were sensitive in any way. Those who

² A full discussion of the practices of President Johnson and his staff on his pre-Presidential papers is set forth in Section 6.

Administration of Richard Nixon

PRESIDENTIAL DOCUMENTS

Week Ending Saturday, November 24, 1973

Upper Great Lakes Regional Commission

*Announcement of Intention To Nominate
Raymond C. Anderson To Be Federal Cochairman.
November 16, 1973*

The President today announced his intention to nominate Raymond C. Anderson, of Maple City, Mich., to be Federal Cochairman of the Upper Great Lakes Regional Commission. He will succeed Thomas F. Schweigert, who became Alternate Federal Member of the Delaware River Basin Commission on September 6, 1973.

From 1969 to 1971, Mr. Anderson served as executive assistant to Michigan Gov. William G. Milliken. He has been retired since 1971 and was also retired from 1964 to 1969. From 1959 to 1964, he served as administrative assistant to then-Congressman Robert P. Griffin, from 1952 to 1959, he was administrative assistant to Senator Charles E. Potter of Michigan, and he was administrative assistant to Congressman Roy O. Woodruff of Michigan from 1937 to 1944 and from 1946 to 1952.

He was born on March 5, 1912, in Grand Rapids, Mich. Mr. Anderson was graduated from Grand Rapids Junior College in 1932. From 1944 to 1946, he served as an officer in the U.S. Navy.

NOTE: The announcement was released at Key Biscayne, Fla.

Associated Press Managing Editors Association

*The President's Remarks in a Question-and-Answer
Session at the Association's Annual Convention in
Orlando, Florida. November 17, 1973*

THE PRESIDENT. President Quinn and ladies and gentlemen:

When Jack Horner,¹ who has been a correspondent in Washington and other places around the world, retired after 40 years, he once told me that if I thought that the White House Press Corps answered (asked) tough questions, he (I) should hear the kind of questions the managing editors asked him. Consequently, I welcome this opportunity tonight to meet with the managing editors of the Nation's newspapers.

I will not have an opening statement because I know, with 400 of you, it will be hard to get through all of the questions you have, and I understand the President has a prerogative of asking the first question.

Mr. Quinn [John C. Quinn, Gannett Newspapers, and president, Associated Press Managing Editors Association]

WATERGATE AND THE FUTURE

Q. Mr. President, this morning, Governor Askew of Florida addressed this group and recalled the words of Benjamin Franklin. When leaving the Constitutional Convention he was asked, "What have you given us, sir, a monarch or a republic?" Franklin answered, "A republic, sir, if you can keep it."

Mr. President, in the prevailing pessimism of the lingering matter we call Watergate, can we keep that republic, sir, and how?

THE PRESIDENT. Well, Mr. Quinn, I would certainly not be standing here answering these questions unless I had a firm belief that we could keep the republic, that we must keep it, not only for ourselves, but for the whole world. I recognize that because of mistakes that were made, and I must take responsibility for those mistakes, whether in the campaign or during the course of an administration, that there are those who wonder whether this republic can survive. But I also know that the hopes of the whole world for peace, not only now, but in the years to come, rest in the United States of America. And I can assure you that as long as I am physically able to handle the position for which I was elected, and then reelected last November,

¹ Everett D. Jack Horner was a reporter with the Washington Post from 1937 until his retirement in November 1973. Since 1973 he has been White House correspondent for that newspaper.

...and I think then, do you still feel the same about both men and both statements?

THE PRESIDENT. First, I hold that both men and others who have been charged are guilty until I have evidence that they are not guilty,² and I know that every newspaper man and newspaper woman in this whole audience would agree with that statement. That is our American system. Second, Mr. Haldeman and Mr. Ehrlichman had been and were dedicated, fine public servants, and I believe, it is my belief based on what I know now, that when these proceedings are completed that they will come out all right.

On the other hand, they have appeared before the grand jury before, they will be appearing again, and as I pointed out in answer to an earlier question, it probably does not make any difference, unfortunately, whether the grand jury indicts them or not, whether they are tried or not, because, unfortunately, they have already been convicted in the minds of millions of Americans by what happened before a Senate committee.

FURTHER QUESTIONS ON THE ELLSBERG CASE

Q. Mr. President, this is Ed Heins from the Des Moines Register and Tribune. At the time you gave Egil Krogh approval for the Dr. Ellsberg project, was there any discussion of surreptitious entry to any premises and was there any discussion of legality or illegality in that situation?

THE PRESIDENT. I think, sir, that you have made an assumption that Mr. Krogh and others have not testified to—I am not saying that critically, but I think I do remember what the evidence is. I don't think Mr. Krogh has said, or Mr. Ehrlichman or anybody else, that I specifically approved or ordered the entrance into Dr. Ellsberg's psychiatrist's office. As a matter of fact, on the other hand, I learned of that for the first time on the 17th of March, which I have stated in my August 15 statement, which will be available to the members of the press when this meeting is concluded.

Second, with regard to such activities, I personally thought it was a stupid thing to do, apart from being an illegal thing to do, and third, I should also point out that in this particular matter, the reason that Mr. Krogh and others were engaged in what we call the "plumbers operation" was because of our concern at that time about leaks out of our Government—the Pentagon Papers, which is, you recall, what Ellsberg was all about, as well as other leaks which were seriously damaging to the national security, including one that I have pointed out that was so serious that even Senator Ervin and Senator Baker agreed it should not be disclosed. That is what they were working on.

² Made in the session, it was pointed out that the President must speak in the future under "Correction of Earlier Statement."

THE PRESIDENT'S INCOME TAXES

Q. Joe Ungaro of the Providence Evening Bulletin. The Journal-Bulletin on October 3 reported that you paid \$592 in Federal income tax in 1970, and \$878 in 1971. Are these figures accurate, and would you tell us your views on whether elected officials should disclose their personal finances?

THE PRESIDENT. Well, the answer to the second question is I have disclosed my personal finances, and an audit of my personal finances will be made available at the end of this meeting, because obviously you are all so busy that when these things come across your desk, maybe you don't see them. I can simply point out that that audit I paid for—I have not gotten the bill yet but I know it is several thousands of dollars—and I think that that audit is one that is a pretty good one. That audit, however, deals with the acquisition of my property and knocks down some of the ideas that have been around. But since this question has been raised, let me, sir, try to respond to it as fully as I can.

I paid \$79,000 in income tax in 1969. In the next 2 years, I paid nominal amounts. Whether those amounts are correct or not, I do not know, because I have not looked at my returns, and obviously the Providence Journal has got much better sources than I have to find such returns. And I congratulate you, sir, for having such a lively staff.

Now, why did I pay this amount? It was not because of the deductions for, shall we say, a cattle ranch or interest or, you know, all of these gimmicks that you have got where you can deduct from, which most of you know about, I am sure—if you don't, your publishers do. But the reason was this. Lyndon Johnson came in to see me shortly after I became President. He told me that he had given his Presidential papers, or at least most of them, to the Government. He told me that under the law, up until 1969, Presidential or Vice Presidential papers given to the Government were a deduction, and should be taken, and could be taken as a deduction from the tax.

And he said, "You, Mr. President, ought to do the same thing." I said, "I don't have any Presidential papers." He said, "You have got your Vice Presidential papers."

I thought of that a moment and said, "All right, I will turn them over to the tax people." I turned them over. They appraised them at \$500,000. I suppose some wonder how could the Vice President's papers be worth that. Well, I was, shall we say, a rather active Vice President. All of my personal notes, including matters that have not been covered in my book—which I don't advise other people to write, but in any event I wrote one and I will stand by it—all of my papers on the Hiss case, on the famous fund controversy in 1952, on President Eisenhower's heart attack, on President Eisenhower's stroke,

... to the fact that I had a new production in 1971-1972, and on my visit with Khrushchev, all of the papers, all of my notes, were valued, many believe conservatively, at that amount.

And so, the tax people who prepared it, prepared the returns, and took that as a deduction. Now no question has been raised by the Internal Revenue about it, but if they do, let me tell you this: I will be glad to have the papers back and I will pay the tax because I think they are worth more than that.

I can only say that we did what we were told was the right thing to do and, of course, what President Johnson had done before and that doesn't prove, certainly, that it was wrong, because he had done exactly what the law required.

Since 1969, of course, I should point out Presidents can't do that. So, I am stuck with a lot of papers now that I have got to find a way to give away or otherwise my heirs will have a terrible time trying to pay the taxes on things that people aren't going to want to buy.

CORRECTION OF EARLIER STATEMENT

MR. QUINN. Mr. President, may I suggest that you may have misspoke yourself when you said that you assumed Haldeman and Ehrlichman are considered guilty until proven not guilty.

THE PRESIDENT. Yes, I certainly did, if I said that—thank you for correcting me.

DEMANDS ON THE PRESIDENT

Q. Richard Smyser, from The Oak Ridger in Oak Ridge, Tennessee. Senator Mark Hatfield said recently that we demand so much of a President, we ask him to play so many roles that no man can hold that kind of responsibility without having to share that responsibility with all Americans.

To what extent do you think that this explains possibly how something like Watergate can occur?

THE PRESIDENT. I could stand here before this audience and make all kinds of excuses, and most of you probably would understand because you are busy also. '72 was a very busy year for me. It was a year when we had the visit to China, it was a year when we had the visit to Moscow and the first limited nuclear ban on defensive weapons, you recall, as well as some other very significant events.

It was a year, too, when we had the very difficult decisions on May 8, the bombing and mining of Hanoi and then the negotiations and then in December, of course, the very, very difficult—perhaps the most difficult—decision I made of the December bombing, which did lead to the breakthrough and the uneasy peace, but it is true with all of the Americans home, all of our POW's home, and peace at last for a while in that period.

Now, during this period of time, frankly, I didn't do much the campaign. I didn't run the campaign. People around me didn't bring things to me that they probably should have because I was frankly just too busy trying to do the Nation's business to run the politics.

My advice to all new politicians, incidentally, is always run your own campaigns. I used to run mine, and I was always criticized for it, because you know whenever you lose you are always criticized for running your own campaign. But my point is Senator Hatfield is correct, whether you are a Senator or a Congressman, you are sometimes very busy, you don't watch these things. When you are President, you don't watch them as closely as you might. And on that, I say if mistakes are made, however, I am not blaming the people down below. The man at the top has got to take the heat for all of them.

THE PRESIDENT'S PERSONAL FINANCES

Let me just respond, if I could, sir, before going to your question—I will turn left and then come back to the right; I don't want to tilt either way at the moment, as you can be sure—[laughter]—since the question was raised a moment ago about my tax payments, I noted in some editorials and perhaps in some commentaries on television, a very reasonable question.

They said, you know, "How is it that President Nixon could have a very heavy investment in a fine piece of property in San Clemente and a big investment in a piece of property in Florida," in which I have two houses, one which I primarily use as an office and the other as a residence and also an investment in what was my mother's home, not very much of a place but I do own it—those three pieces of property.

I want to say first, that is all I have. I am the first President since Harry Truman who hasn't owned any stock since ever I have been President. I am the first one who has not had a blind trust since Harry Truman. Now that doesn't prove that those who owned stocks or had blind trusts did anything wrong, but I felt that in the Presidency it was important to have no question about the President's personal finances, and I thought real estate was the best place to put it.

But, then the question was raised by good editorial writers—and I want to respond to it because some of you might be too polite to ask such an embarrassing question—they said, "Now, Mr. President, you earned \$800,000 when you were President. Obviously, you paid at least half that much or could have paid half that much in taxes or a great deal of it—how could you possibly have had the money? Where did you get it?"

And then, of course, overriding all of that is the story to the effect that I have a million dollars in campaign funds which was broadly printed throughout this country with retractions not quite getting quite as much play as the printing of the first, and particularly not on television.

PRESIDENTIAL DOCUMENTS RICHARD NIXON, 1974

THE PRESIDENT'S NEWS CONFERENCE OF FEBRUARY 25, 1974

OPENING STATEMENT

THE ENERGY SITUATION

THE PRESIDENT. Ladies and gentlemen, before going to your questions, I have a brief report on the energy situation, the progress we have made to date, and also the problems that we have in the future.

You will recall that last October when we saw the energy crisis developing as a result of the embargo and other matters, that there were dire predictions that we would have problems with home heating oil and even fuel to run our factories.

As a result of the cooperation of the American people—and they deserve most of the credit—and also the management on the part of Mr. Simon and his organization, we have now passed through that crisis. The home fuel oil, as far as it is concerned, as we know, has been furnished; no one has suffered as a result. And as far as our plants are concerned, all have had the fuel that is required to keep the plants going.

The major problem that remains is one that was brought home to me when I talked to one of the sound men before coming in. I asked him if he was having any trouble getting gas. He said, "Yes, when I went to the service station this morning, they wouldn't give me any because my gauge was wrong. They thought that I had more than half a tank. Actually, I had zero in the tank."

I have seen this problem as I have driven around in the Miami area and also in the Washington area—the gas lines, the fact, too, that in the eastern States generally we do have a problem of shortage of gasoline, which has been, of course, very difficult for many people going to work, going to school, or what have you.

Mr. Simon last week, as you know, at my direction, allocated additional gasoline for these particular areas, and he is prepared to take more action in the future to deal with this problem.

As far as the entire situation is concerned, I am able to report tonight that as a result of the cooperation of the American people, as a result, too, of our own energy conservation program within the Government, that I now believe confidently that there is much better than an even chance that there will be no need for gas rationing in the United States.

As far as that is concerned, however, I should point out that while the crisis has passed, the problem still remains, and it is a very serious one.

Having reported somewhat positively up to this point, let me point out some of the negative situations that we confront.

One has to do with the Congress. The Congress, of course, is working hard on this problem, but I regret to say that the bill presently before the Congress is one that if it reaches my desk in its present form, I will have to veto it.

I will have to veto it because what it does is simply to manage the shortage rather than to deal with the real problem and what should be our real goal, and that is to get rid of the shortage.

his conduct surrounding and leading up to his resignation, in fact brought dishonor upon his office, this Administration, and the country?

THE PRESIDENT. It would be very easy for me to jump on the Vice President when he is down. I can only say that in his period of service that he rendered dedicated service in all of the assignments that I gave to him.

He went through, along with his family, a terribly difficult situation, and he resigned, as I think he thought he should, because of the embarrassment that he knew that would cause to the Administration and also because he felt that in view of the criminal offense that was charged that he should not stay in office. Now at this point I am not going to join anybody else in kicking him when he is down.

TAX DEDUCTION FOR VICE PRESIDENTIAL PAPERS

Q. Mr. President, thank you very much. To follow on an earlier question about taxes, April 21, 1969, was a significant day for you in taxes and for the country, too. That is the notary date on the deed that allowed you to give your papers to the Government and pay just token taxes for 2 years. On that same date, you had a tax reform message in which you said, and I quote: Special preferences in the law permit far too many Americans to pay less than their fair share of taxes. Too many others bear too much of the tax burden.

Now, Mr. President, do you think you paid your fair share of taxes?

THE PRESIDENT. Well, I would point out that those who made deductions such as I made in this particular instance, included John Kenneth Galbraith, Jerome Wiesner,¹ Vice President Humphrey, President Johnson, a number of others. I did not write that law. When it was brought to my attention, rather vigorously by President Johnson when I saw him shortly after my election, he thought that it would be wise for me to give my papers to the Government and take the proper deduction.

I did that. Under the circumstances, as you know now, that deduction is no longer allowed. As far as I am concerned, I think that was probably a proper decision.

Mr. Lisagor [Peter Lisagor, Chicago Daily News] is next.

OIL EMBARGO

Q. In your State of the Union address, you mentioned that Arab leaders had assured you that they were calling an urgent meeting to discuss or consider the lifting of the embargo. Were you misled by the Arab leaders or what happened to that meeting?

¹ At his news conference on Tuesday, February 26, 1974, Deputy Press Secretary Gerald L. Warren stated: "The information that Mr. Wiesner had donated certain papers was reported in December by wire services and others, and apparently Mr. Wiesner did not take a deduction of the value of those papers. . . . The President certainly regrets the mention of Mr. Wiesner."

THE PRESIDENT. Mr. Lisagor, we were informed that they were calling an urgent meeting. We expected that to take place on the 14th of February. But the Arab leaders, as you know, are not a united group necessarily, and that is an understatement. Under the circumstances, while the Arab leaders who had given us this assurance tried to go forward with the meeting, they were unable to get the cooperation of others.

I believe now, however, that they will get that cooperation, that the meeting will be held, and I believe that they will lift the embargo.

MR. CORMIER. Thank you, Mr. President.

NOTE: President Nixon's thirty-sixth news conference was held at 7:30 p.m. on Monday, February 25, 1974, in the East Room at the White House. It was broadcast live on radio and television.

Vietnam Veterans Day

*The President's Remarks Upon Signing Proclamation 4270 in a Ceremony in the Cabinet Room.
February 26, 1974*

This proclamation that I am now signing, all of the Members of the House and the Senate who have sponsored it, are aware of it. The members of the press and perhaps the Nation are not aware of why we have a proclamation designating March 29 as Vietnam Veterans Day.

That is the day that the last American combat soldier left Vietnam, the day, therefore, that marks the final conclusion of America's longest and, without question, its most difficult war.

It seems to me appropriate that in signing this proclamation that reference be made to those who fought in that war, those who served in that war, why they fought and why their service was not only in the interest of the country, but in the highest tradition of service to the United States of America as far as the wars in which we have been engaged throughout our history, wars which we trust we will not have to be engaged in in the future if our foreign policy is as successful as we hope to make it.

I know that there are some who quarrel with the phrase that I have often used, that our men in Vietnam and those who served in the Armed Forces finally achieved what many thought was impossible—peace with honor.

I do not use this phrase in any jingoistic sense. I use it because when I consider the alternative, I realize how much those who served did for their country under difficult circumstances.

This has been described as a war without heroes, without heroes perhaps except for those who occasionally receive a Medal of Honor that we hand out, but very little attention given to it, those without heroes, a war in which

sheet. He said that this knowledge was gained through his long experience in the field, and that he never made or retained any work papers in the course of doing his appraisals.

We asked Newman if he knew any tax law. He said that he knew some tax law, since laws dealing with gifts of papers affected his field of interest. He said, however, that for most questions on taxes he relied on his attorney, Sheldon Cohen. We had been supplied with a copy of a letter from Cohen to Newman, dated April 11, 1969, by Charles A. McNelis, attorney for Frank DeMarco. When asked about this, Newman at first said that he did not remember receiving such a letter. When we showed it to him, he said that he must have received it, but he did not know how it came to be in DeMarco's hands.

4. Work for President Nixon.

After President-elect Nixon called on President Johnson in November of 1968, a White House employee called Newman, saying that Newman would probably get a call from one of President Nixon's people. Late in November, 1969, Pat Tannian, a partner in the firm of Mudge Rose Guthrie Alexander, called him and asked him if he would be available to do some work for President Nixon. Newman responded that he would, but heard no more from Tannian. Late in December, Newman was in Washington, D. C., for a wedding. Tannian called Newman at the Madison Hotel and asked him if he would go to New York City to

MEMORANDUM

TO: John Doar
Bernard Nussbaum
Robert Sack

FROM: Smith McKeithen

DATE: June 12, 1974

SUBJECT: Interview with Richard Ritzel

On June 10, 1974 from 3:10 until 5:30 p.m., Bob Owen and I interviewed Richard Ritzel in a conference room at Mudge, Rose, Guthrie & Alexander, 20 Broad Street, New York, New York. Mr. Ritzel was accompanied by Bill Kramer, an associate with his firm.

1. GIFT OF PAPERS IN 1968

Ritzel said that on December 19, 1968 he met with President-elect Nixon at Mr. Nixon's apartment. Mr. Ritzel recalled that President Nixon, or some one on President Nixon's staff, had talked with President Johnson, and that President Johnson had told them about taking tax deductions for gifts of papers to the National Archives. Mr. Nixon asked Ritzel if he knew anything about this and Ritzel said no but said that he would look into it. Ritzel said that he researched the question and concluded that a gift could be made and that a tax deduction could be taken by President-elect Nixon for such a gift.

Ritzel said that many of Mr. Nixon papers were stored in cartons in his law firm's warehouse. Ritzel said that a decision was made to take a deduction for the maximum amount allowable

-2-

for 1968. and he called Martin Feinstein, an accountant with the firm of Vincent Andrews, Inc., to get a figure of the approximate maximum deduction; Feinstein said that \$60,000 was the figure. Ritzel said that he may have learned of Newman from Krogh, Morgan, or Loie Gaunt, who had worked with Mr. Nixon for a number of years. All of them were assigned to work with Ritzel on the matter of the gift of papers. Ritzel said that he has a memo to him from Krogh dated December 20, 1968, which says that Jim Jones of President Johnson's staff gave Krogh the names of Newman, Lawson Knott (the Administrator of the GSA) and Dr. James Rhoads (the Archivist of the United States). Ritzel refused to give us a copy of this memorandum on the grounds that it was covered by the attorney-client privilege.

Ritzel said that he first talked to Newman by phone in the week of December 22. Newman did not want to come to New York but Ritzel told him that he had to come to New York to pick papers which he would later appraise for Mr. Nixon. Ritzel said that Newman arrived in his office on Sunday, December 29, 1968. He said that Newman went over all the boxes in the Mudge, Rose offices, which consisted of boxes which Ritzel had selected from the index of the contents which had been previously prepared by Gaunt. Newman looked at the papers and worked from Gaunt's index as well.

mittee. The Joint Committee staff did not examine the tax returns of the President for the years prior to 1969 except to review the effect any of the items on the prior years' returns may have on the tax returns under examination.

The following is a summary of those procedures followed by President Nixon's representatives for his gift of papers in 1968. A full discussion of the staff view on whether this gift is deductible for tax purposes is discussed in Section 5 of this report.

Procedures followed for 1968 gift

First consideration of 1968 gift.—According to public statements made by President Nixon, at a meeting he had with President Johnson after the election in late November or early December 1968, President Johnson told him that he could obtain tax deductions for gifts of his papers. John Ehrlichman told the staff that President Johnson gave President-elect Nixon the name of an appraiser, Ralph Newman, whom he had used.²

People assigned to work on gift.—Richard Ritzel, President Nixon's former law partner at what is now Mudge, Rose, Guthrie & Alexander, told the staff that on December 15 or 16, 1968, he was asked by President-elect Nixon to look into the possibility of making a gift of papers in 1968. Mr. Ehrlichman told the staff that he was also asked by Mr. Nixon to look into the desirability of making a gift of papers, and Mr. Ehrlichman assigned Edward L. Morgan and Egil Krogh of his staff to this task.

Decision to make a gift.—Mr. Ritzel told the staff that on December 22, 1968, he met with President-elect Nixon and reported that it was feasible to make a gift but that, since it was close to the end of the year, time would be a problem. Mr. Nixon told him to go ahead.

Determination of amount of gift.—Mr. Ritzel told the staff that an accountant with the firm handling Mr. Nixon's taxes at that time called him and said that they would need approximately \$60,000 to use up the maximum deduction allowable for 1968 (30 percent of Mr. Nixon's adjusted gross income). Mr. Ritzel said that he came up with a figure of \$80,000 for the size of the gift because he wanted to make sure that they had enough for the maximum deduction. Mr. Ritzel said that a decision was made not to make a larger gift with a larger carryover at that time because Mr. Nixon was thinking of assigning to charity income from certain royalties which he believed might not be appropriate for him to receive while serving as President. Mr. Ritzel said that for this reason, and because of the short time period during which they had to make the arrangements for the gift, they decided only to make a gift slightly larger than that needed to use up the maximum deduction for 1968 and to wait for the future for other gifts.

Segregation of material for gift.—The pre-Presidential Nixon papers were stored in a warehouse near the offices of Mudge, Rose in New York. During the week of December 23, 1968, a number of boxes of these papers were transported from the warehouse to the offices of the law firm. On December 26 and 27, the boxes of papers were reviewed to isolate those that were sensitive in any way. Those who

² A full discussion of the practices of President Johnson and his staff on his pre-Presidential papers is set forth in Section 6.

M E M O R A N D U M

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Bernard Nussbaum
Robert Sack

June 12, 1974

From: Smith McKeithen

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1. GIFT OF PAPERS IN 1968

Ritzel said that in December, 1968 he met with President-elect Nixon many times. He thinks that it was in a meeting held in Mr. Nixon's apartment on December 19 that he was told President Nixon, or someone on President Nixon's staff, had talked with President Johnson, and that President Johnson had told them about taking tax deductions for gifts of papers to the National Archives. Mr. Nixon asked Ritzel if he knew anything about this, and Ritzel said no, but said that he would look into it. Ritzel said that he researched the question and concluded that a gift could be made and that a tax deduction could be taken by President-elect Nixon for such a gift.

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Ritzel said that he gave Newman the target figure of \$80,000 and Newman selected certain items. Ritzel cited as examples the letters to President Nixon which he received from children after giving his Checkers speech, the manuscript from the book Six Crises, and the President's handwritten notes for a speech given in New Hampshire during the campaign of 1968. Ritzel reported Newman's saying that the notes for the speech alone were worth \$10,000. Ritzel said that Newman selected some but not all of the cartons in the Mudge Rose offices, for giving.

Ritzel said that he had asked Pat Tannian, a partner in the Mudge Rose firm, to draft the President's deed of gift and then reviewed the draft himself. He said that Tannian drafted two versions, one comparatively unrestricted, and another restricted to the extent that during his service as President, none of the papers could be examined without Mr. Nixon's approval. Ritzel said that he called Sheldon Cohen on December 26, and made an appointment for Tannian to meet with Cohen at 10 a.m. on December 27. Tannian flew to Washington, D.C. and discussed the deeds with Cohen. Ritzel said that while Tannian cannot recall a "line-by-line discussion" of the deeds, there would have been no other reason for Tannian to talk with Cohen. Tannian then went to the GSA where he met with a National Archives representative, who requested that language be inserted allowing National Archives employees to have access to the papers for cataloging purposes. Tannian telephoned the suggested

M E M O R A N D U M

December 27, 1968

TO PRESIDENT-ELECT NIXON
FROM R. S. RITZEL

Enclosed herewith are two forms of Chattel Deed running from you to The United States of America. The one marked "A" is a simple form of conveyance of papers, manuscripts and other materials without restriction of any kind except that they are ultimately to be placed in the Presidential archival depository.

The second, marked "B", is a form of Chattel Deed which conveys such papers, manuscripts and other materials to the United States but places restrictions as to their use. The limitations, briefly, are as follows:

1. You shall have right of access at all times.
2. During such time as you hold the office of President of the United States, no other persons shall have right of access except those designated by you in writing to the General Services Administrator.
3. The items are to be placed in the Presidential archival depository at such time as the same is es-

tablished.

4. Items No. 3 and 4 in the Chattel Deed are technical provisions which we feel are necessary for the purposes for which the gift is being made.

By way of explanation, we have been culling your files in our warehouse, and likewise have been in touch with Ralph Newman, who has been the appraiser for the L.B.J., Truman, Kennedy and other gifts of Presidential papers to the United States. Newman will be in New York on Monday to go over items which have been culled to date from the files. It is not our intent to give all of your papers at this time but rather only such as will be appraised at a value which will be somewhat in excess of the maximum charitable deduction which you can take on your 1968 income tax return. I have been in touch with Marty Feinstein, and he advises me that this figure is about \$60,000.

The reason for the two Chattel Deeds is that at the present time we are not completely clear that there are sufficient papers which could be made available to the public at the moment and which would not be considered in the sensitive area. If we do find by Monday that there are

such papers, then we will use only the Deed marked "A". If, however, we feel that there may be some which should be restricted from public perusal while you are the President of the United States, we will use the Deed marked "B". It is more advantageous to use "A" only, but we have not had the time, since I discussed this matter with you Sunday last at the apartment, to complete a sufficient examination of the files to be sure that there are papers and manuscripts which would not be considered to be in the sensitive area. The reason for the unrestricted gift is that the value, for tax deduction purposes, will undoubtedly be higher than those upon which restrictions are placed.

I would therefore suggest that both Deeds be executed by you, in duplicate. Mr. Krogh, who is the bearer of this memorandum and the enclosures, will bring them back to New York so that they will be available on Monday. At that point, we will be able to go over the papers with Newman and attach the necessary schedules, for which I presume we will have your authority, to either or both Deeds and make delivery to the General Services Administrator. I might also add, for your information, that the forms of Deeds have been cleared both with the

Commissioner of Internal Revenue and the General Services Administrator, and arrangements have been made for a representative of the General Services Administrator to receipt for the papers to be delivered at this office on either Monday or Tuesday of next week, so that the matter will be completed before the end of the year.

R. S. R.

A-3

Exhibit I - 1

CHATTEL DEED

from

RICHARD M. NIXON

to

THE UNITED STATES OF AMERICA

Dated: December 30, 1968

A-4

CHATTEL DEED

from

RICHARD M. NIXON

to

THE UNITED STATES OF AMERICA

The undersigned, Richard M. Nixon, does hereby give, assign, transfer, set over and deliver unto The United States of America all of his right, title and interest in and to the papers, manuscripts and other materials (hereinafter collectively referred to as "the Materials") which are listed and described in Schedule A annexed hereto and hereby made a part hereof, to have and to hold the same to The United States of America forever.

This conveyance is made to The United States of America without any reservation to the undersigned, Richard M. Nixon, of any intervening interest or any right to the actual possession of the said Materials, it being understood that the delivery of this Chattel Deed to the General Services Administrator shall convey to The United States of America the right and power immediately to take possession of the said Materials and to hold, use and

dispose of the same, subject only to the following commitments made on behalf of The United States of America by the General Services Administrator:

1. The undersigned shall have the right of access to any and all of the Materials and the right to copy or to have copied any and all of the Materials by any means of his selection, and to take and retain possession of any or all such copies for any purpose whatsoever. During such time as the undersigned shall hold the office of President of the United States, no person or persons shall have the right of access to such Materials except the undersigned and those who may be designated in writing by the undersigned, and in the case of any person or persons so designated, such right of access shall be limited to those Materials as shall be described in the instrument by which he, she, it or they shall be designated, and, for the purposes specified in such instrument; and, if such instrument shall so provide, the person or persons designated therein shall have the further right to copy such of the Materials as shall be described in such instrument and to take and retain possession of such copies for such purposes as shall be specified in said instrument.

A-6

The undersigned shall have the right and power at any time during his lifetime to modify or remove this restriction as to any or all of the Materials and/or to grant access to any group or groups of persons by notification in writing to the General Services Administration or other appropriate agency of The United States of America.

2. If a Presidential archival depository shall be established for the housing and preservation of the Materials pertaining to the career of the undersigned in public service, then, as soon as practicable after the establishment of such depository, the Materials shall be transferred to and thereafter housed and preserved at such Presidential archival depository. Until the establishment of such a depository, the Materials shall be housed and preserved at a place to be selected by the General Services Administrator or other appropriate agency of The United States of America.

3. None of the foregoing restrictions is intended to prevent the Materials from being used exclusively for public purposes, and in no event shall any of the said restrictions be so construed.

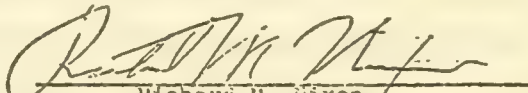
A-7

4. Notwithstanding the foregoing restrictions, employees specifically designated by the archivist of the National Archives and Records Service shall, in the course of performance of their necessary archival duties, have such access to the said Materials as shall be necessary for normal archival processing activities.


By the signature of his duly authorized agent below, the General Services Administrator accepts this conveyance for and on behalf of The United States of America, and confirms the commitments made by his office on behalf of The United States of America, as set forth above.

This instrument is executed in duplicate, each of which is an original, but both of which taken together shall be deemed one and the same instrument.

Dated: December 30, 1968


Richard M. Nixon

GENERAL SERVICES ADMINISTRATION

By 

A-8

SCHEDULE A ANNEXED TO AND PART OF
CHATTEL DEED FROM RICHARD M. NIXON
TO THE UNITED STATES OF AMERICA
DATED *December 30, 1968*

The materials conveyed by the Chattel Deed of which this Schedule is a part are located in packing cases identified by roman numbers I through XXI. The column at the left identifies each packing case by reference to its number, the center column describes the materials contained in such case in general terms and the column to the right shows the approximate number of items contained in such case.

I	Children's Letters	}	
II	" "		
III	" "		9,000 items
IV	82nd Congress		2,500 items
V	Campaign of 1964		3,000 items
VI	1965 Appearances, Trips		3,000 items
VII	Plaques and Key (5) Whittier Year Book 1966 8 Tapes	}	13 items
VIII	Far East Trip		3,000 items
IX	1960 Campaign		3,000 items
X	1959 Speech Files (Correspondence and copies)		3,000 items
XI	1964 Campaign Tapes in Chronological Order		24 items
XII	Plaques, Key, Picture		10 items

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XIII	1960 Campaign Clippings	-1,000 items
XIV	<u>Six Crises</u> Manuscript	2,000 items
XV	1959 Appearances, Trips	1,250 items
XVI	1953 Trip - Far East Letters, Notes	2,000 items
XVII	1955 Central American Trip	3,000 items
XVIII	1956 Trip - Philippines, Pakistan, etc.	3,000 items
XIX	1964 Correspondence Prior to Republican Convention Young People's Correspondence Book on 1964 Convention	1,250 items
XX	1954 Itineraries, Appearances Foreign Dignitaries (met by RIN)	1,250 items
XXI	1964 Campaign Notes (plus 2 Books and Framed Plaque)	3 items

*First draft prepared for the gift /
papers -- this was not used
probably at this time.*

CHATTEL DEED

from

RICHARD M. NIXON

to

THE UNITED STATES OF AMERICA.

The undersigned, Richard M. Nixon, does hereby give, assign, transfer, set over and deliver unto The United States of America all of his right, title and interest in and to the papers, manuscripts and other materials (hereinafter collectively referred to as "the Materials") which are listed and described in Schedule A annexed hereto and hereby made a part hereof, to have and to hold the same to The United States of America forever.

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dispose of the same, subject only to the commitment made on behalf of The United States of America that a Presidential archival depository, within the meaning of 44 U.S.C.A. 397, shall be established for the purpose of housing and preserving materials pertaining to the career of the undersigned, Richard M. Nixon, in public service, then, as soon as practicable after the establishment of such Presidential archival depository, the Materials shall be transferred to and thereafter housed and preserved at the depository.

By the signature of his duly authorized agent below, the General Services Administrator accepts this conveyance for and on behalf of The United States of America, and confirms the commitment made by his office on behalf of The United States of America, as set forth above.

This instrument is executed in duplicate, each of which is an original, but both of which taken together shall be deemed one and the same instrument.

Dated:

Richard M. Nixon

GENERAL SERVICES ADMINISTRATION

By _____

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-5-

He said that a GSA representative came to his office on December 30, to sign the deed of gift as accepted, and, together with Jack Naylor, the Mudge Rose office manager, supervised the removal of the papers from the law firm's office and their loading on a GSA truck. Ritzel said that he understood that the papers would then be taken to Washington, D. C.

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Statement on tax return on restrictions of gift

The Internal Revenue Service's regulations require anyone taking an income tax deduction for a gift of property to a charity to include on the tax return certain information, including any restrictions that may be attached to the gift. The President's tax return for 1969 had an information sheet consistent with what was required by the regulations, setting forth a brief description of the relevant information about the gift. As to any restrictions, it was stated on the tax return:

"None. The gift was free and clear with no rights remaining the taxpayer."

This is essentially the same statement that was contained in the 1968 tax return relating to the gift of papers in that year.

The staff believes that this statement on the tax return is inaccurate. The staff has no conclusive evidence, however, that the statement was made intentionally by those preparing the President's tax returns or any evidence that the President was aware of this statement on his tax return.

This statement on the 1969 return was prepared primarily by Frank DeMarco, according to his statements and the statement of Arthur Blech, the President's accountant, to the Joint Committee staff. Mr. DeMarco states that he knew of the 1969 deed and its contents at the time the statement was prepared, but that since the 1968 deed contained similar restrictions and the 1968 tax return contained the statement of no restrictions, he believed that a similar statement was appropriate on the 1969 return.

6. Staff Analysis of Facts Relating to the Second Gift of Papers Apart From the Deed

A. INTENTIONS OF PRESIDENT NIXON TO MAKE A GIFT IN EARLY 1969

During the course of its investigation into the validity of the deduction for the second gift of papers, the staff made an effort to determine whether President Nixon intended to make a gift of his papers in the early part of 1969 and the amount of the intended gift, including whether the thinking at this time was to make a bulk gift (that is, one large enough to permit a carryforward) or a one-year gift for tax purposes. The staff discussed this issue with several members of President Nixon's staff who were handling his personal finances in early 1969, other individuals who were involved in President Nixon's legal and financial matters at that time, and personnel at the National Archives who were involved in the discussions and arrangements with the White House staff relating to the gift. The following discussion of intentions is based on the information the staff has received in the interviews with these people and in the various items of correspondence and memoranda that the staff obtained. The staff has specifically asked the President's counsel to furnish all materials which may in any way provide information on the intent to make a gift in the early part of 1969, but as yet at least, the staff has not received any information other than what is summarized below. During our interviews, there were references to other internal White House memoranda not referred to below, but the staff has not been furnished copies of them.

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MEMORANDUM

THE WHITE HOUSE

WASHINGTON

February 6, 1969

TO: THE PRESIDENT
FROM: JOHN EHRLICHMAN
SUBJECT: CHARITABLE CONTRIBUTIONS AND DEDUCTIONS

As you know, we arranged for the maximum 30% charitable gift-tax deduction in 1968 by donating a portion of your papers appraised at the necessary amount to the United States. Again this year you are in a position to make charitable contributions up to 30% of your adjusted gross income. Of this 30% maximum deduction, 20% can be for any charitable enterprise designated in the code. For over 20%, up to a maximum of 30%, the gift must be to a governmental entity for a public purpose. This would include a gift of your papers.

I would suggest that we arrange a schedule of charitable contributions from sales of your writings, so that each year you can give to those charities you select 20% of your adjusted gross income. The remaining 10% will be made up of a gift of your papers to the United States. In this way, we contemplate keeping the papers as a continuing reserve which we can use from now on to supplement other gifts to add up to the 30% maximum.

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Regarding the gift of proceeds from publication of the preface to SIX CRISES by LADIES' HOME JOURNAL, we are arranging for LADIES' HOME JOURNAL to pay the proceeds directly to Boys Clubs of America and Young People of America, Inc., the organization which supports Jimmy McDonald. While we will have to account for these proceeds in gross income, the amount will be deductible as a charitable contribution.

① Good

② Let me know what
we can do on the foundation
idea -

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to give his papers for historical reasons, but because of the time pressures they could only give part of the papers.

Morgan insisted that he had no specific duties in regards to the gift of papers in 1968. He said that he was merely a liaison between Ritzel and Ehrlichman. He had no assignment from Ehrlichman or Ritzel. Generally, his assignment was just to hang around and help out.

Morgan received no instructions in regard to the gift from Nixon nor did he talk about the papers nor any other substantive matters with Nixon. Nor was Morgan involved in sorting out sensitive papers.

Up until that time Morgan had had nothing to do with large gifts or large gifts of papers. He was not familiar nor experienced in the giving of such large gifts. He does not come from a wealthy family.

4. Sale of Apartment

On the sale of the apartment, Morgan does not remember when he first started to work on it. Ritzel was working on the sale and sometimes he would call Morgan when he couldn't contact Ehrlichman. Morgan's assignment was apparently to assist Ritzel on the sale, although Morgan was not actually in the negotiations which were handled by Ritzel. Morgan remembers Ritzel calling and saying that there were buyers for the apartment.

6. Meetings with the President.

We then covered Morgan's meetings with the President beginning in January, 1969.

Morgan's first substantive meeting with the President was early in the Administration when Nixon's brother was to be appointed to some board. Someone brought to Morgan's attention a statute banning nepotism. Ed read the statute and then went to Ehrlichman's office to tell him about it. Ehrlichman called the President and they went to the Oval Office, and thus commenced Morgan's first substantive meeting with the President.

The meeting occurred late in the afternoon or early in the evening, and Ehrlichman started out and said Morgan had been studying a problem. Ehrlichman then turns to Morgan and said in effect, "Okay, Ed take it," and Morgan's first words were, "Mr. President, it's about your brother." Morgan then went on to explain the problem about Nixon's brother and Nixon indicated that if such a statute existed, no appointment could be made.

Morgan doubts that Nixon knew his name then and now feels that the President never got to know him until some time later. In early 1969 this was the only substantive meeting with the President and he received no phone calls. However, once Morgan got a phone call from Ehrlichman who said he was in Nixon's office and who asked what the Presidential succession amendment to the Constitution stated.

Morgan recalls meeting alone with Nixon in 1971. Morgan was home ill and received a call from Steve Bull that the President wanted to see him. Morgan went to the White House and waited a couple of hours and then met with the President alone. Nixon wanted to write a letter to one of the mothers who had written the White House on school busing. The President told Morgan to search through the letters, find one appropriate for the President's response, and draft such a response. Morgan thought that this was a bad idea and the letter was never written.

After detailing all these meetings, Morgan admitted that he had never talked with the President about any Presidential private or personal affairs.

Morgan was also present in 1969 when the President first saw the San Clemente home.

7. Morgan's Activities before April, 1969.

In early 1969 Ehrlichman asked Morgan to look at whether or not there was any way a rich person, for example, Getty could give money to the White House social functions. LBJ had spent the entire allowance for the fiscal year 1969, and Ehrlichman asked Morgan to research the question of whether or not money could be received from private sources for this purpose. Morgan thought it was a lousy idea and talked with Stuart about it. Then he told Ehrlichman that he and Stuart talked about it and thought it was a bad idea. Ehrlichman seemed unhappy that Morgan had talked to Stuart, but as to the contribution idea, said "OK." There is a memo from Haldeman to Ehrlichman reciting the President's interest about this. Morgan saw this memorandum at a dinner with Stuart.

In 1969 Morgan did some advance work on the President's European trip. Ehrlichman, Morgan and a Secret Service contingent went over to Europe and were dropped off at various stops along the President's route. Morgan was dropped last in Paris and he set up the President's Paris stop.

8. Morgan's Involvement in 1969 "Gift".

Morgan first told us that he was not responsible for the President's personal affairs. He was certainly less responsible for them than Ehrlichman, but he had comparable responsibility with Krogh.

Nussbaum read the February 25, 1969 letter (and the enclosed memo) from Krogh to Ritzel. Morgan did not draft the memo addressed by Ehrlichman to the President and he doesn't remember seeing the memo in 1969. This letter is not familiar to Morgan.

As for the February 13, 1969 letter from Krogh to Ritzel, Krogh showed that letter to Morgan, and Morgan now recalls that the letter looks familiar.

Morgan recalls that after the European trip in the last week in March Morgan traveled with Krogh to New York. Morgan recalls that he spent a day in New York at the old Nixon firm beginning there at 10 o'clock. Apparently there was a life insurance agent who wanted to sell Nixon life insurance, and Krogh, Morgan, Ritzel, Tannian met with this insurance agent at a "stroking" meeting because Nixon didn't want to buy any more insurance. After they rebuffed the agent they went to lunch. After returning to the office they met for 1-1/2 or 2 hours and talked about everything -- a sort of clean-up conversation. However,

- 15 -

Morgan does not recall now whether or not they talked about the gift nor does he recall specific conversations about the apartment sale. He does recall, however, talking about the Nixon Foundation. Morgan now thinks that the papers could have been discussed at that meeting, and this meeting may be the source of Morgan's recollection of the \$500,000 figure. As Morgan recalls, Krogh went to Washington to report to Ehrlichman. but Morgan stayed in New York.

9. Meeting With Haldeman and Ehrlichman.

Morgan also remembers that before he went to California in April 1969 he met with Ehrlichman and Haldeman in Ehrlichman's office. Morgan was going to California, in part to meet with the Whittier College people to look around the college site ostensibly searching for a site for the President's library.

Morgan now thinks that the gift of papers must have come up in this meeting with Haldeman and Ehrlichman but maybe not, he just doesn't remember any such discussion. Morgan knew he was going out to the coast to meet with Kalmbach or DeMarco, and Haldeman and Ehrlichman informed Morgan that Kalmbach and DeMarco would be taking over the President's financial affairs. Haldeman and Ehrlichman told Morgan that the President intended to leave California and that he wanted nothing more to do with New York and that Kalmbach and DeMarco would therefore succeed Mudge, Rose as Nixon's lawyers. Haldeman and Ehrlichman further told Morgan that Kalmbach and DeMarco were "family" with whom anything could be discussed.

Morgan does not remember telephoning DeMarco before going to California, although he thinks that he must have spoken with DeMarco before leaving Washington.

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Exhibit I - 8

February 28, 1969

Mr. Egil Krogh, Jr.
Staff Assistant to the Counsel
The White House
Washington, D. C.

Dear Bud:

I wish to acknowledge receipt of your letters of February 13th and 25th. Replying to your first letter, I do think it an excellent idea for Ed Morgan, you and I, and possibly Pat Tannian, to get together as soon as possible. You will recall that Newman's appraisal was on a quick basis, and it will be necessary to obtain a more formal document from him, which we must have before April 15th, the due date of the income tax return. Also, if the figures prove to be higher than anticipated, it will have to be taken into consideration in making any gifts this year.

Coming to your second letter and John Ehrlichman's memo, there are some statements in John's memo which trouble me, and I am not clear just what the concept is as to the formation of a foundation. I know that neither John nor Ed nor you are familiar with the special statutes dealing with gifts of Vice Presidential and Presidential papers to the Government for the purpose of ultimately housing them in a library, and it may well be that the concept of the foundation is unnecessary. Furthermore, I might mention that the extra 10% deduction is not limited to gifts to the Government or its political subdivisions. The exemption is broader. If you will recall, it had not been our plan to

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A 158

Mr. Egil Krogh, Jr.

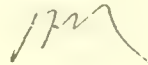
-2-

February 23, 1969

L give any of the Presidential papers, within the near future, to the Government since Newman made it quite clear to us that the volume of Vice Presidential papers which we had would undoubtedly take care of the deduction for a number of years, and the thought was that we would use the oldest first, with the hope that we would be able to get the full deduction for practically the entire life of the President. Again, I think a more detailed comprehensive plan must be evolved, taking into consideration, also, other gifts the President has in mind to make via the assignment of the proceeds received for publication of the President's writings.

I suspect that the burden of my entire letter is merely a confirmation of my agreement with you that it is essential that Ed Morgan, you, Pat Tannian and I should sit down at the earliest moment. Why don't you call me on the telephone when Ed comes back, and we will set up a time.

Sincerely,



RSR:BM

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MONDAY, MARCH 3, 1969

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lems should be solved. We need their advice and we are going there very honestly trying to seek it.

I think in that spirit we will be able to accomplish several objectives. I said at the outset that you should not expect spectacular news from this trip. I do say, however, that it will be solid news—solid in the sense that as a result of this trip there will be a new spirit of consultation which will result in a new spirit of confidence among our European friends and ourselves.

I believe that this first discussion will lead to others. I believe that the foreign ministers conference that will be held here on the 20th anniversary of NATO will be a more productive conference, looking toward purpose, as I have indicated at my press conference a couple of weeks ago.

I believe also that the meetings that I will expect to have—probably in the United States, with the various leaders that I will be seeing in Europe on this occasion—will be far more useful now that we have started on this kind of basis with my going to Europe first, talking to them, and having long discussions face to face, without feeling the pressure of having to make some kind of settlement of an outstanding crisis problem that comes upon

What I am really, perhaps, hoping for most out of this trip is that as a result of it the United States interest in and the United States support of the European-American relationship has never been stronger and has never been more needed if we are going to have a peaceful world.

Secondly, that there will be a new era of consultation, and I mean real give-and-take consultation, between the leaders of the European-American community. We need it. I want it, and I was very happy to find that our colleagues in Europe also want it and need it. I am looking forward to that.

Well, when we return, I will be glad to try to expand on some of these questions that I have not answered in the opening remarks. I would like to just close on one final note.

This is a very large group here and very few of you—maybe half of you—have been on trips with me before. But I am sure that people like Pete Lisagor, and others who have—Bill Theis, who went on the first one in 1953—will recall that it has always been one of my customs prior to going on a trip to have some sort of a get-together with the members of the traveling press and then afterwards to have a reunion.

I didn't know whether it was possible now that I have moved to this position, but I thought it was worth trying, and I am delighted that you can all come. I won't have the same contact that I have always tried to have with the members of the press on such a trip. It isn't possible, but we will do our best to make it good from a logistical standpoint. I hope that when we return, not only in a more formal press conference but in the reception which we will hope to have at some time afterwards, I will have a chance to see you all again personally. And now

we will move into the State Dining Room if you like and we can chat a bit more.

Thank you.

NOTE: The President spoke at 5:15 p.m. on Friday, February 21, 1969, in the East Room at the White House.

Departure for the European Visit

*The President's Remarks at Andrews Air Force Base,
February 23, 1969*

Mr. Vice President, Mr. Ambassador and your distinguished colleagues, all of the distinguished Members of the House and the Senate:

I want all of you to know how grateful I am that on this rainy Sunday morning at such an early hour you have come to send me off on this trip to Europe.

As I leave I know that this trip is one which has created a great deal of interest, both in the United States and Europe. It is a trip, I wish to emphasize, which is not intended and will not settle all of the problems we have in the world. The problems we face are too complex and too difficult to be settled by what I would call the "showboat" diplomacy.

On the other hand, before we can make progress with the problems with which we have differences with our opponents, it is necessary to consult with our friends. And we are going to have real consultation because we seek not only their support but their advice and their counsel on the grave problems that we face in the world—the problem of Vietnam, of the Mideast, monetary problems, all the others that may cause difficulties between nations.

One note I would like to leave with this group before we take off. I have found that many who have written me have expressed concern about the possibility of demonstrations abroad. And my answer was eloquently given by a letter I received from a friend in Berlin. He said that 95 percent of the people in Berlin were glad that we were coming and 5 percent of the people did not want us to come.

And so it is in the world today; the fact that there are demonstrations or the possibility of demonstrations cannot deter anyone who goes abroad to seek new solutions to the problems that block peace in the world. And I can assure all of our friends abroad that we look forward to their welcome. We will not be deterred by the fact that a few do not want us to come.

We will remember that the great majority of the people here in the United States, as indicated by this bipartisan sendoff, and the great majority of people in Europe and in the world want peace and they want the statesmen of the world to do everything they can to seek peace.

This is the first step in what we hope will be a long series of steps that will take us down the road toward better understanding between nations. Thank you.

NOTE: The President spoke at 7:47 a.m. at Andrews Air Force Base near Washington, D.C.

Andrews Air Force Base

Remarks of the President and the Vice President Following the President's Return to Washington From Europe. March 2, 1969

THE VICE PRESIDENT. Mr. President, it is a distinct honor to welcome you back from a very successful trip on behalf of all of your fellow countrymen.

You have carried the real message of America to our friends on the European continent and in Great Britain. I think the success of your trip is borne out by the warmth of the reception you received not just from the foreign dignitaries, but from people of all types in every country you visited.

Mr. President, you listened—you listened not just to respond to what was said to you, but you listened to learn, and this came through very graphically to the people who saw you and heard you.

It has been a great privilege for America to have you there. I think that we see a new maturity in American diplomacy coming into being because of your ability to listen and to show compassion and understanding of other peoples. The prayers of literally millions of Americans have been answered by your safe return. We are delighted to have you back.

THE PRESIDENT. *Mr. Vice President, Mr. Speaker, all of the distinguished Members of the House, the Senate, and the Cabinet who have come to the airport today:*

Over the past week we have had some splendid receptions in the great capitals of Europe, but I can assure you that none means more than to have such a warm welcome on such a cold night as we return to Washington, D.C.

I am most grateful for your words which were so generous.

I can only respond at this time by giving you one overall impression of this trip. Later in the week I will be meeting the press and responding in greater detail.

That one impression is, I think, summed up by the word "trust." I sensed, as I traveled to the capitals of Europe, that there is a new trust on the part of the Europeans in themselves growing out of the fact that they have had a remarkable recovery economically and politically, as well as in their military strength, since the devastation of World War II.

Also, I think I sensed a new trust in the United States growing out of the fact that they feel that there are open channels of communication with the United States, and a new sense of consultation with the United States.

Finally, I think there is developing a new trust in the future, not only on the part of the people of Europe and their leaders, but on the part of the people of the United States—confidence based on the fact that together we are going to be able to develop some new understandings with those who, in the past, have opposed us on the other side of the world.

I would not want this opportunity to pass without mentioning that while this was a working trip, with most of it devoted to conferences and very few public appearances, there were times, as I rode through the streets of the great capitals of Europe, that I felt that the American people, all of the American people, in the person of their President, were being greeted by the people of Europe.

If you could have been with me as I rode through the streets of Berlin on a snowy, cold day and had seen the thousands of happy and hopeful faces in those crowds on the streets, you would have been proud that America did meet her world responsibilities and has met her world responsibilities in helping others defend their freedom. You would have been proud to be an American at this time in our history.

Thank you very much.

NOTE: The exchange of remarks began at 10:10 p.m. at Andrews Air Force Base, Maryland.

Apollo 9

Statement by the President Following the Successful Launching of the Spacecraft. March 3, 1969

The successful launching of the Apollo 9 spacecraft marks another milestone in the journey of man into space. The hopes and prayers of mankind go with Col. James A. McDivitt, Col. David R. Scott, and Mr. Russell Schweickart on their courageous mission. The genius of the American scientific and technological community, which created and designed the Saturn V, the command ship, and the lunar module, once again stirs the imagination and gratitude of the world.

We are proud of this American adventure; but this is more than an American adventure. It is an adventure of man, bringing the accumulated wisdom of his past to the task of shaping the future.

The 10-day flight of Apollo 9 will, we hope, do something more than bring America closer to the moon; it can serve to bring humanity closer by dramatically showing what men can do when they bring to any task the best of man's mind and heart.

National Safe Boating Week, 1969

Proclamation 3896. March 3, 1969

*By the President of the United States of America
a Proclamation*

In a time of unprecedented opportunity for leisure-time activities, more and more Americans are discovering the benefits of boating. The ever-increasing traffic on the

States. He also made it clear that his deeds of gift would relinquish all of his rights, title, and interest to the material including any personal right of his to actual possession or enjoyment of the materials. Mr. Knott responded to this letter indicating that the method of making gifts as outlined was satisfactory to him.

There are four deeds of gift for the years from 1965 to 1968 by which President Johnson conveyed title to specified portions of his papers and other historical materials. As the staff understands it, near the end of each year an attorney in the law firm representing President Johnson would notify Ralph Newman, his appraiser, of the dollar amount of materials desired to be given to the United States. Mr. Newman would then refer to the inventory sheets of President Johnson's materials in storage at the National Archives and go to the National Archives to determine what would be appropriate to recommend as the gift for that year. Mr. Newman indicated that he usually tried to recommend material that he thought was important, particularly trying to designate whole series to keep the material to be deeded to the Government together. The staff understands that Mr. Newman's recommendations were usually accepted, and a deed was prepared and signed by President Johnson. Each of the deeds is counter-signed by Lawson B. Knott, Jr., then Administrator of General Services, acknowledging receipt and delivery of the property to the United States. The deeded material was then separated from the other items in storage in the National Archives.

As indicated above, the staff understands that President Nixon was told by President Johnson the procedures he used in making his gifts of papers each year. It is not clear how much detail was related by President Johnson to President-elect Nixon in their conversation on gifts of papers to the United States, or to what extent the information relating to what was done with respect to President Johnson's papers was learned by President Nixon's staff from President Johnson's staff or from the files. Discussed below is a series of events in chronological order relating to the transfer of President Nixon's papers from the Executive Office Building to the National Archives. This chronology is based on interviews conducted by the staff and documents furnished to the staff. The information available leads the staff to suggest that this transfer may have been modeled after the pattern used by President Johnson; that is, having the papers transferred to the National Archives, inventoried, and stored so that at the end of the year gifts could be recommended by an appraiser upon determining the maximum amount usable on that year's tax return.

Discussion between White House Staff and National Archives personnel on Arrangements for Transfer of Papers

On March 11, 1969, Edward L. Morgan and Charles Stuart, both from John Ehrlichman's staff, met with Walter Robertson, Executive Director of the National Archives, and Daniel Reed, Assistant Archivist for Presidential Libraries. A memorandum summarizing the meeting (Exhibit I-13) indicated that there was a general discussion of Presidential Libraries. The memorandum stated that upon the request of the White House staff the National Archives had agreed to furnish a junior archivist, Terry Good, to the White House staff to complete, index, and provide reference service on a

daily diary of the President's activities. The memorandum further stated "Beginning March 24 he will assist other NARS [referring to National Archives] personnel who have agreed upon request to organize and inventory a large body of President Nixon's papers located in F.O.B. 7 [Federal Office Building, number 7, the New Executive Office Building], and to recommend appropriate disposition of this material." [bracketed material added]

On March 13, 1969, Mr. Morgan wrote a letter to Dr. Reed (Exhibit I-14) confirming his (Mr. Morgan's) oral request (made previously at the meeting on March 11) that the National Archives check to be certain that all 1968 deeded papers were received in Washington and that the indexing of the papers deeded in 1968 would be completed by April 1, so that Mr. Newman could complete his appraisal for tax purposes.

On March 14, Mr. Stuart wrote a letter to Dr. Reed (Exhibit I-15) indicating that arrangements had been made to move President Nixon's records stored in the New Executive Office Building to the National Archives and that they were awaiting a call from Dr. Reed's office with directions. The letter also asked Dr. Reed to arrange the movement of President Nixon's records from New York to the National Archives stating, "These papers have been designated by the President as his 1968 tax year contribution to the National Archives and as such require appraisal by Mr. Ralph Newman for IRS purposes."

It should be noted that neither of these letters written by the White House staff referred to any portion of the undeeded papers as a gift to the United States, nor do they indicate an intent at that time to treat any portion of those papers as a gift. There was a distinction made, moreover, between the 1968 papers, which were specifically referred to as deeded papers, and the other undeeded papers. If Mr. Ehrlichman had been told by President Nixon in late February of his intention to make a bulk gift of his papers and if Mr. Ehrlichman had told that to Mr. Morgan, the staff believes that in all probability they would have made some reference to this intent to someone at the National Archives. In staff interviews with Dr. Reed and others at the National Archives, Archives personnel have stated that they did not, in March 1969, participate in any discussions or have any knowledge concerning a gift of any part of the Nixon papers not deeded in 1968, but rather recall that conversations about the undeeded papers dealt with the use of the National Archives as a storage place for them.

The brief prepared by the President's counsel asserts, "Acting on Mr. Ehrlichman's instructions, Mr. Morgan proceeded to coordinate the delivery of the papers to the National Archives . . . On March 26 and 27, 1969, all of the pre-Presidential papers stored in Federal Office Building #7 were delivered to the National Archives at Mr. Morgan's direction."

According to Dr. Reed, this is not accurate. He told the staff that at the March 11, 1969, meeting with Mr. Morgan, it was agreed that the Archives personnel would process the papers at the Executive Office Building but that shortly after that meeting Dr. Reed, believing that the space there was inadequate and that he would have trouble supervising his employees there, decided that it would be preferable to work on the papers at the Archives and made this

A-188

Exhibit I - 13

Doc. I - 13 3/21/69
To HR

At the request of Mr. Edward Morgan, Deputy Council⁵⁻¹ to the President, NARS Executive Director Walter Robertson and the Assistant Archivist for Presidential Libraries, Dr. Daniel J. Reed, met with Mr. Morgan and Mr. Charles Stuart of his staff on March 11. Following a general discussion of Presidential Libraries, Mr. Morgan indicated to Mr. Robertson and Dr. Reed that Mr. Stuart would be their White House "regular contact on Nixon Library business." NARS has also, upon request, furnished a junior archivist, Mr. Terry Good, for the White House staff. He is located in the Executive Office Building where he compiles, indexes, and provides reference service on a daily diary of the President's activities. Beginning March 24 he will assist other NARS personnel who have agreed upon request to organize and inventory a large body of President Nixon's papers located in F.O.B. 7, and to recommend appropriate disposition of this material.

Reading file - NL ✓

F.B. Evans

A-189

Exhibit I - 14

THE WHITE HOUSE
WASHINGTON

March 13, 1969

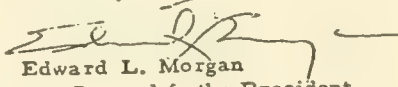
Dear Dr. Reed:

This will merely confirm our discussion of the other day in which I requested that someone from your organization double check and be certain that you have now received all of the Vice Presidential papers that were sent to the Archives from the President's former law firm in New York, and secondly that the indexing and cataloging of the Vice Presidential papers that were given as a gift to the Archives will be complete by April 1 in order that Mr. Neuman may complete his appraisal for tax purposes.

Should you have any questions at all in this regard, please feel free to call either me or Bud Krogh in our office.

Thank you very much.

Sincerely,


Edward L. Morgan
Deputy Counsel to the President

Dr. Daniel J. Reed
Assistant Archivist for Presidential Libraries
National Archives and Records Service
Washington, D.C. 20408

daily diary of the President's activities. The memorandum further stated "Beginning March 24 he will assist other NARS [referring to National Archives] personnel who have agreed upon request to organize and inventory a large body of President Nixon's papers located in F.O.B. 7 [Federal Office Building, number 7, the New Executive Office Building], and to recommend appropriate disposition of this material." [bracketed material added]

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According to Dr. Reed, this is not accurate. He told the staff that at the March 11, 1969, meeting with Mr. Morgan, it was agreed that the Archives personnel would process the papers at the Executive Office Building but that shortly after that meeting Dr. Reed, believing that the space there was inadequate and that he would have trouble supervising his employees there, decided that it would be preferable to work on the papers at the Archives and made this

L suggestion to the White House. Thus, Dr. Reed indicates that the papers were transferred to the Archives at his instigation, not at Mr. Morgan's.

Physical transfer of the 1968 deeded papers and the undeeded papers

On March 20, 1969, the President's 1968 deeded papers were transported from the New York Federal Records Center, where they had been kept since December 30, 1968, to the National Archives Building and put in area 14W-4.

The staff has been furnished the notes of Mary Lethbridge, who was on Dr. Reed's staff (Exhibit I-16). These notes indicate that on March 21, she called Mr. Newman's office and talked to his assistant/secretary, Mrs. April. She told Mrs. April that the 1968 deeded papers were ready for Mr. Newman's examination. The notes further indicated that Mrs. April stated that she believed Mr. Newman would not need to examine these papers as he had been working with the President right along and was informed of the contents. She stated that all that was needed was typing up the appraisal. (In fact, however, Mr. Newman did have to examine the 1968 deeded papers again for purposes of his appraisal document, as discussed below.)

On March 24, Mr. Stuart called Dr. Reed in regard to moving the 1969 papers from the New Executive Office Building. Apparently, Dr. Reed was not in his office, and a message was taken for him. The staff was furnished a copy of this phone message along with a covering memorandum from Harold S. Trimmer, the General Counsel of GSA (Exhibit I-17), which indicated that Mr. Stuart wanted the National Archives to move all of President Nixon's papers from FOB #7 to the National Archives "at once and to sort them here [at the Archives]." The note further indicated that the move was to be on March 26, 1969. Dr. Reed told the staff he referred the message to Mrs. Lethbridge and asked her to see that someone was there to receive the papers and to place them in storage.

On March 26, and 27, approximately 1,217 cubic feet of papers were transferred from the EOB to the National Archives and put in area 19E. After the shipment was received, Dr. Reed wrote to Mr. Morgan on March 27 (Exhibit I-18) that the shipment to the National Archives of both the papers that President Nixon had given in 1968 and the papers in the EOB had taken place. The letter states, "Our staff, assisted by Mrs. Anne Higgins [of the White House staff] when necessary, will now organize them so that they can be made available for appropriate use." The letter further states, "The papers which the President gave to the Government on December 30, 1968, were moved from the Federal Records Center in New York on March 20. They are now in Stack Area 14W-4. We have examined them and they are ready and available for Mr. Ralph Newman's examination. We so notified his office on March 21."

Custodial Storage

Because Presidents generally place their papers in a Presidential Library, the National Archives performs the service of storing Presidents' papers and preparing them for ultimate deposit in a library even when the papers are not the property of the United States. This service is called "courtesy" or "custodial" storage. The Archives unpacks the papers, sorts them, catalogs them, and reboxes them in num-

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Exhibit I - 15

MAR 19 1969

THE WHITE HOUSE
WASHINGTON

March 14, 1969

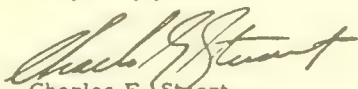
Dear Mr. Reed:

I have today made arrangements with Mr. Charles Rotchford to provide both trucks and manpower to move the Nixon records now stored in Federal Office Building #7 to an Archives Building designated by you. Mr. Rotchford is prepared to act at your convenience and is anticipating a call from your office with the necessary directions.

I would appreciate your arranging the movement of the Nixon records now housed in your Federal Retention Center in New York to a site of your choice here in Washington. These papers have been designated by the President as his 1968 tax year contribution to the National Archives and as such require appraisal by Mr. Ralph Newman for IRS purposes. Accordingly, will you please notify Mr. Newman when the transfer has been effected so that he may make the required appraisal.

Your cooperation is appreciated.

Very truly yours,


Charles E. Stuart
Staff Assistant to the Counsel

Mr. Daniel J. Reed
Assistant Archivist for Presidential Libraries
National Archives and Records Service
Washington, D. C. 20408

A-192

Exhibit I - 17

January 11, 1974

Daniel J. Reed-NL

Additional document on 1969 gift

: Ted Trimmer-L

Mr. Sherrod East, former consultant to the Office of Presidential Libraries, brought us on January 11 the original of the enclosed telephone memorandum regarding the transfer of the Nixon pre-Presidential papers.

The memorandum records a telephone call I received from Charles Stuart, Staff Assistant to the Counsel, The White House, March 24, 1969, asking us to move all Nixon papers from FOB #7 to the National Archives and to sort and store them. I referred the message to Mrs. Mary C. Lethbridge (MCL) then of my staff and she gave it to Mr. East. It will be added to our files on the 1969 shipment of papers. Mr. Stuart's letter of March 14, 1969, on the same subject is already a part of our documentation.

DANIEL J. REED
Assistant Archivist
for Presidential Libraries

Enclosure:
Memo of Call, xerox copy of

cc:
Official file-NL
Reading file-NL

MWL:ach

A-193

MCZ

Standard Form 63
November 1961
GSA FPMR (41 CFR) 101-11.6

MEMORANDUM OF CALL

Date	Time
<i>3-24</i>	

TO: *Dr. Reed*

YOU WERE CALLED BY— ☐ YOU WERE VISITED BY—
Mr. Chas. Stewart

TELEPHONE:	Number or code	Extension
	<i>145</i>	<i>2239</i>

☒ PLEASE CALL ☐ WAITING TO SEE YOU
☐ WILL CALL AGAIN ☐ WISHES AN APPOINTMENT
☐ RETURNING YOUR CALL
☐ IS REFERRED TO YOU BY:

LEFT THIS MESSAGE: *1 call/11am. today*
he wanted us to move
all Nixon papers from
FOB #7 at Rock Island
Ill. (see Wed. Ratchford
of USA) will

Received By—

63-107 U.S. GOVERNMENT PRINTING OFFICE : 1965 OF-733-153-(650)

A-194

Move 145
2545

Wednesday

Sent the two
Have someone
pick them up & place
them in storage.

ABR

A-195

Exhibit I - 18

March 27, 1969

Mr. Edward L. Morgan
Deputy Counsel to the President
The White House
Washington, D.C. 20500

Dear Mr. Morgan:

This is in reply to your letter of March 13 and to Mr. Stuart's letter of March 14.

The records of President Nixon recently in Room 235 and in the ground floor vault of Federal Office Building No. 7, together with two filing cabinets from Room 12, Executive Office Building, were moved into the National Archives, Stack Area 19B, on Wednesday, March 26. Our staff, assisted by Mrs. Anne Higgins when necessary, will now organize them so that they can be made available for appropriate use.

The papers which the President gave to the Government on December 30, 1953, were moved from the Federal Records Center in New York on March 20. They are now in Stack Area 14W-4. We have examined them and they are ready and available for Mr. Ralph Newman's examination. We so notified his office on March 21.

Please call upon us if we can be of further assistance.

Sincerely,

DANIEL J. REED
Assistant Archivist for
Presidential Libraries

Official file-ML
Reading file-ML

MCL/jua

P.S. The document: "Limited Right of Access"
from RAIN to Ralph Newman, dated
March 27, 1969, has just arrived. Thanks
very much. DJR

A-303

Exhibit I - 45

LIMITED RIGHT OF ACCESS

from

RICHARD NIXON

to

RALPH NEWMAN

(Pursuant to Chattel Deed from Richard M. Nixon to The
United States of America, dated December 30, 1968)

Dated: March 27, 1969

A-304

LIMITED RIGHT OF ACCESS

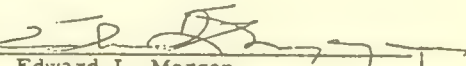
WHEREAS, the undersigned executed a Chattel Deed to
The United States of America dated December 30, 1968, a copy
of which is attached hereto as EXHIBIT I,

NOW, THEREFORE, pursuant to the restrictions set forth
in Paragraph "1", page 2 thereof, the undersigned hereby grants
to RALPH NEWMAN a limited right of access to inspect and examine
for the purpose of appraisal, but not to copy or remove, all of
those documents set forth in Schedule A which is annexed to and
made a part of said Chattel Mortgage, EXHIBIT I hereof.

This limited right of access shall expire April 16, 1969.

DATED: This 27th day of March, 1969.

RICHARD NIXON
President of the United States
of America

By 
Edward L. Morgan
Deputy Counsel to the President

A-305

IN THE CITY OF WASHINGTON)
) ss:
DISTRICT OF COLUMBIA)

On this, the 27th day of March, 1969, before me, the undersigned Notary Public, personally appeared EDWARD L. MORGAN, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he is Deputy Counsel to the President of the United States and that he executed the foregoing instrument on behalf of the President, acting in his capacity as such Deputy Counsel, and that, as such Counsel, he is authorized to sign such document on behalf of the President of the United States.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year first above written.

My commission expires:

May 31, 1973


Notary Public

COPY OF DEED ATTACHED TO ORIGINAL "ACCESS" DOCUMENT
FORWARDED TO N/A

to the White House, and Mrs. Anne Higgins of the White House staff. They showed him the records that were at that time stored in the EOB. He stated that with a Secret Service escort he proceeded to make a preliminary inspection of the records and that later he and Mr. Good, working alone, spent much of the rest of that morning and part of the afternoon making notes and plans.

On March 26-27, 1969, the papers were moved to stack area 19E of the Archives. Mr. East's memorandum indicates that upon receiving the material there, he realized that unpacking and shelving the papers had to begin immediately in order to make room for all the crates and storage boxes, which at that time were stacked four or five high in no particular order. He further indicated that it was apparent to him that his plan, which he had devised his first day at work, for identifying series of records while unpacking, reboxing and shelving the material was essential to achieve "initial intellectual and physical control of the papers."

The Archives provided Mr. East with a team of trainees to help him in arranging, boxing, labeling, and inventorying the pre-Presidential papers. He said that the trainees worked on the project for varying periods, but that no one trainee worked on it throughout.

Condition of papers prior to Newman's visit on April 8

According to Mr. East, the condition of the papers when they arrived on March 26-27, as described above, made it impossible for anyone to have done work on either the deeded or undeeded papers at that time. The papers were in a variety of shipping crates, file cabinets, and storage boxes; they were unsorted and unlabeled. On April 1, 1969, Mary Livingston reported for work at the National Archives as an assistant to Dr. Reed, the Assistant Archivist for Presidential Libraries, and was put in charge of rotating the trainees who were assigned to help Mr. East. In her interview with the staff, she confirmed Mr. East's description of the condition of the papers, stating that they were in complete disarray when she first saw them on April 1, 1969.

Mr. East said in the staff's interview that he began to work first with the undeeded pre-Presidential papers stored in stack area 19E. During the first week of April, shortly after he had begun work, Dr. Reed told him that Ralph Newman was coming to appraise the 1968 gift of papers and that he (East) should get them ready for Mr. Newman. Mr. East said that he spent two days inventorying, boxing, and labeling the 45 cubic feet of papers deeded in 1968 for preparation for Mr. Newman's expected visit to the National Archives. Mr. East said that he received no word that Mr. Newman was to do any work on the undeeded papers and, as indicated above, their condition made it impractical for anyone to do any work on examining, identifying or appraising any of these papers.

Newman's April Visit to the Archives

Ralph Newman visited the National Archives on April 8, 1969. The statement released by the White House on President Nixon's finances on December 8, 1973, stated that Mr. Newman segregated or designated the papers constituting Part II of Nixon's gift on that date. On President Nixon's tax return for 1969, Mr. Newman's affidavit states that he examined the "papers of Richard Milhous Nixon, Part II," from April 6-8 and on November 3, 17-20, and December 8, 1969.

Newman's letter relating to his April visit to the Archives.—In a letter to the Internal Revenue Service agent examining President Nixon's return dated January 7, 1974 (Exhibit I-22), Mr. Newman said that in preparing documents like his affidavit, he customarily indicates the date on which he, or one of his associates, leaves Chicago, or some other place, to begin an appraisal. He wrote that this merely indicates when the "meter starts ticking," not when he actually began work directly on appraising the papers. He said he left Chicago on Sunday, April 6, made some calls and visits on Monday, and actually visited and worked at the Archives on Tuesday, April 8.

In his letter Newman said he went to the Archives for two purposes:

"1. To obtain the numbers affixed to the containers which by that time contained the 1968 gift of the Nixon papers (Part I), so that I might add these to the appraisal document which was in process of completion so that the President's attorneys or accountants could complete his 1968 tax return.

"2. I wanted to ascertain how large a collection of Nixon papers had been delivered to the National Archives. This was so that I could begin to make some determination as to future gifts. Since this was early in the year, it was not necessary for me to work on the papers or to actually examine them. I had been informed that delivery had been made to the National Archives of a large shipment on March 26 and 27. This was a very substantial shipment and included, in addition to papers, artifacts, films, tapes, books, and photographs."

In the letter Mr. Newman said he had been informed that the President would want to make a gift of around \$500,000, the specific papers to be selected from the materials delivered to the Archives on March 26 and 27. At this point, he wrote, he was only interested in verifying that there were sufficient papers in the Nixon collection to justify a \$500,000 gift.

Newman noted that he spent most of the time at the Archives completing his work for the 1968 appraisal document. He wrote that Mr. East "or some other person from the staff was with me all of the time I was in the building." He said further, "On April 8, I merely visited the area where the large collection of unsorted or unorganized material had recently been placed. It was obvious from the sheer volume that there would be more than enough to cover the 1969 gift requirement of \$500,000." Newman also wrote, "I did not segregate nor direct the segregation of the material at this time."

Newman's first meeting with the Joint Committee staff.—When Newman met with the Joint Committee staff, which was subsequent to his January 7, 1974, letter to the Internal Revenue Service agent examining President Nixon's return, he related essentially the same facts contained in his letter. He said that he learned of the \$500,000 figure in a telephone call from either Frank DeMarco or Edward Morgan in early April 1969.

Newman's second meeting with the Joint Committee staff.—In a second meeting with the staff, Mr. Newman said that he had reconstructed the events in his mind and reviewed his files for more information relating to his activities on the second gift of papers, particularly his phone conversation with Mr. DeMarco and his first examination of the papers. He said that in this reexamination of his activities, he determined that he had not spoken to Mr. DeMarco for

the first time in April but rather at the end of October, which he said meant that the sequence of events that he previously thought had occurred in April 1969 occurred, rather, in November 1969. He stated that his chronology of events surrounding his work on the papers was correct but it began in early November 1969 and not in early April 1969. He told the staff that the initial confusion in his mind about the reference to his possible examination or viewing of the 1969 gift of papers in April of that year results from several things.

Mr. Newman noted that there are errors in recording the dates of his work at the National Archives in his two Nixon appraisal documents. He said that he and his secretary used his travel records as the basis for recording the dates on which he worked on the two gifts. He pointed out that he worked on the 1968 gift in New York at the end of December and then returned to Washington on April 8, 1969, at which time the 1968 papers had been placed in archival boxes and he wanted to note the description and numbers of those boxes for the final appraisal document. He said that his appraisal document for 1968 indicated that he worked at the Archives on just one day, December 29, 1968, but actually he worked on the 1968 gift two days—the one day in December and one day in 1969, April 8. He pointed out further that his appraisal document for the second Nixon gift indicates that he worked one day in April and then continued in November and December of 1969. He stated that this discrepancy was caused by his and his secretary's misreading of their travel records by simply assuming that the work on the first gift was done during 1968 travel and that the work on the second gift was done on the basis of 1969 travel. He indicated that looking at these documents caused him to think in his initial recollections and his statements to the White House and the Internal Revenue Service that perhaps he had worked on the second gift of papers in April 1969 and learned of the \$500,000 figure then.

Mr. Newman told the staff that Sherrod East's insistence that he neither worked on nor saw the undeeded material in April caused him to doubt his belief because Mr. East is a man "who has no ax to grind and who would be truthful." Mr. Newman said that he did see Mr. East then but that it would seem that he saw him in connection with the 1968 material, which agrees with Mr. East's account.

Mr. Newman pointed out, however, that his attorney tells him that there may be a possibility that some undeeded papers were in stack area 14W when he was there working on the 1968 gift of papers. This is because two of the inventory sheets relating to the 1969 papers produced by Mr. Newman indicated that the items on the list were at that time in 14W. Neither he nor his attorney could recall from where they received these sheets. (The staff has the complete set of worksheets compiled by Mr. East and his trainees and in checking for these two sheets has determined that the two worksheets are for material deeded in 1968 which were in 14W; the sheets do not indicate that any of the undeeded papers were stored in 14W.)

Mr. Newman said finally that his original belief that he may have seen the papers in April 1969 stemmed partly from the fact that at the time when he discussed his work on the second gift in 1973 at the White House, he was led to believe that in April 1969 Mr. DeMarco called him to introduce himself as the President's attorney and to tell him that all of Mr. Newman's dealings on such matters would be with him. He said that the April date of this first call from Mr. DeMarco

was simply accepted as an unquestioned fact by all concerned at that time. Mr. Newman indicated that the sequence of events which he recalled was that he had a call from Mr. DeMarco followed by a visit a few days later to the National Archives and then a report on the 1969 papers. As discussed above, Mr. Newman said he now believes from a careful examination of his correspondence, particularly his October 31, 1969, letter to Mr. DeMarco (referred to above as Exhibit I-11) and his telephone records that he may actually have heard from Mr. DeMarco for the first time in October 1969 rather than in April of that year, that he must have worked at the Archives on the undeeded papers for the first time early in November, and that he then wrote and called Mr. DeMarco. He believes that the sequence of events was the same as he originally thought, but that they occurred at a completely different time; that is, at the end of October and the beginning of November, rather than in early April.

DeMarco's handwritten notes on his telephone conversation with Newman.

Frank DeMarco has provided the staff with handwritten notes that he asserts were taken during his first phone conversation with Ralph Newman. The notes themselves (Exhibit I-23) are undated, but Mr. DeMarco's written statement to the staff indicates that he believes the conversation occurred in the first week of April 1969.

The notes indicate that Mr. Newman said he would be at the National Archives on Monday, presumably the next Monday after the phone call, and that he would segregate enough papers to satisfy "this requirement." The note indicates that Mr. Newman would do a preliminary survey for two or three days and would come back in a month to do the detailed examination and segregation and would prepare a "horseback figure" on what else is there. Mr. Newman has told the staff that he believes their conversation took place in late October 1969, not in April.

There are several reasons to suggest that Mr. Newman is correct, not Mr. DeMarco. First, Mr. Newman did not go to the Archives on any Monday in April. (April 8, 1969, was a Tuesday.) He did, however, go to the Archives on Monday, November 3. Second, on November 3, Mr. Newman actually did the things that the notes indicate he said he would do. As will be discussed below, Mr. Newman made a preliminary survey that day and a rough calculation of the value of the whole collection of papers. Several weeks later, Mr. Newman returned to begin a detailed segregation. Third, Mr. DeMarco's notes state that he was to tell Mr. Morgan to inform the National Archives that Mr. Newman was to be there on Monday. For Mr. Newman's April 8 visit to the Archives, arrangements had been made in writing to give him access to the 1968 deeded papers. No right of access was prepared for the November 3 visit, which means that arrangements for Mr. Newman's access to the papers must have been made by phone. (Dr. Reed has informed the staff that Mr. Newman would not have been permitted access to the undeed papers without either a written right of access or a phone call from Mr. Morgan or some other representative of the President.)

The reference to segregation of materials for the gift suggests that Mr. DeMarco did not believe that the President wanted to give an undivided interest in the papers or that he believed the gift consisted

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The reference to segregation of materials for the gift suggests that Mr. DeMarco did not believe that the President wanted to give an undivided interest in the papers or that he believed the gift consisted

of all the papers delivered in March, 1969. Rather it suggests that a specific group of papers to be segregated by Mr. Newman was to be given.

National Archives personnel's account of Newman's visit on April 8

Sherrod East told the staff that he accompanied Mr. Newman on April 8, 1969, to Room 14W of the Archives, where the 1968 deeded papers were kept, and was with him the entire time he was there. Mr. East indicated that Mr. Newman finished sometime during the noon hour and to his knowledge did not return to the National Archives that afternoon. Mr. East said that not only did he not see Mr. Newman that afternoon but that he (Mr. East) worked in stack area 19E with the other pre-Presidential papers during the entire afternoon and that Mr. Newman at no time in the afternoon came to that area.

Mrs. Livingston said that she did not accompany Mr. Newman to 19E that day and that she checked with each one of the archival trainees that were there at that time, finding that none of them said that they took Mr. Newman to 19E. Mr. Newman would have needed someone to accompany him to 19E since it is a locked room (with both a key lock and a combination lock) that is quite a distance from 14W, the location of the 1968 papers, and requires someone with an understanding of the arrangements of the National Archives storage areas to get there because it requires riding two elevators and walking through several different passages to get from 14W to 19E.

Newman's alleged report to DeMarco after his April 8 visit

In his earlier statements to the Joint Committee staff and the Internal Revenue Service, Mr. Newman indicated that several days after he left the National Archives, after working on the undeeded papers for the first time, he called Mr. DeMarco and made this information known to him. Mr. DeMarco also told the staff during his interview that Mr. Newman had told him that he had made a preliminary survey of the papers and had segregated out sensitive letters from the general correspondence files. The staff now believes from the information it has learned that this account is true but, as Mr. Newman indicated in his second meeting with the staff, it did not occur in April, but rather in November 1969. This is verified by Mr. Newman's telephone records that were made available to the staff. These list no telephone calls to Mr. DeMarco in April 1969, but rather show that the first telephone call to Mr. DeMarco occurred on November 5, 1969. This is consistent with Mr. Newman's account that his report to Mr. DeMarco took place in November (rather than April) at which time he had made a preliminary survey and made suggestions for segregating certain sensitive letters in the general correspondence files. As discussed below, it is clear that this preliminary survey and decision to segregate the sensitive correspondence did occur on November 3, 1969.

The staff made extensive efforts to examine the telephone records of Mr. DeMarco to determine if he made any calls to Mr. Newman during this period. Mr. DeMarco told the staff that all calls relating to President Nixon's legal affairs were charged to a Republican National Committee credit card held by Herbert Kalmbach. The staff did examine the telephone records of the Kalmbach, DeMarco law firm and found no listing of any telephone calls to Mr. Newman.

Mr. DeMarco did not know the number of the Republican National Committee credit card. However, the staff did locate records of the card through the Republican National Committee and Mr. Kalmbach. In fact, the credit card was not issued to Mr. Kalmbach until May 1969. From that time through 1970 only one call to Mr. Newman was listed and that call was made April 6, 1970. Thus, no records exist to the staff's knowledge of any calls from Mr. DeMarco to Mr. Newman in early 1969.

April 11 1969: Newman's forwarding appraisal document to Morgan and New York accountant

Upon completing his appraisal document for the President's gift of papers for 1968, Mr. Newman sent an original copy of the appraisal document to Mr. Morgan and also a copy to New York to the President's accountant for the 1968 tax return, Martin Feinstein, then of Vincent Andrews, Inc.

Mr. DeMarco told the staff that in his first conversation with Mr. Newman he advised him that he would be handling the legal affairs for the President and that all matters relating to the President should be referred to him. Mr. Newman confirms this. If Mr. DeMarco had actually had this conversation with Mr. Newman in early April, Mr. Newman said that he would have sent a copy of the appraisal document to Mr. DeMarco as well. The staff is aware that Mr. DeMarco was not involved with the 1968 gift of papers, but the staff believes that, nevertheless, Mr. Newman might have sent him a copy of the appraisal document for his records or, if for no other reason, to establish good will with the President's new attorney with whom he would be dealing. The staff has reviewed the correspondence of Mr. Newman subsequent to October 31, 1969, which Mr. Newman now indicates was his first conversation with Mr. DeMarco, and with respect to each development Mr. Newman either sent a letter directly to Mr. DeMarco or a copy of a letter that he had sent to others, such as Mr. Morgan or to the President. This then tends to support Mr. Newman that he had not had a conversation with Mr. DeMarco in early April.

Newman's invoice for his April work on the papers

Mr. Newman sent an invoice for his April trip to Washington to work on President Nixon's papers (Exhibit I-24). The invoice lists expenses for traveling, etc., and a fee for "The Papers of Richard M. Nixon, Part I." The President's check (signed by Miss Rose Mary Woods) was in full payment of the invoice and on the check (Exhibit I-25) it was stated that it was in payment for "Appraisal of the Papers of Richard M. Nixon, Part I."

This suggests that Mr. Newman did no work on the undeeded papers on his April visit, since his invoice for his April trip only referred to the 1968 gift of papers.

Staff analysis

The staff is satisfied that Mr. Newman did not designate or even examine the undeeded Nixon papers in his April visit to the National Archives. The staff has no information, other than Mr. DeMarco's recollection (which he indicates is his "best recollection"), that casts any doubt on Mr. Newman's recollection that he had not been hired to work on the undeeded papers by Mr. DeMarco in early 1969 and

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statement, he had decided upon using the land trust, which he said is a common vehicle when more than one purchaser of property is involved. On April 24, 1969, DeMarco had executed a letter agreement with Title Insurance Trust Company which would make them trustee under this arrangement. The final paper work was completed in July. On July 1, 1969, he said that he had the escrow papers ready to close, but that he had no idea where the purchase money was coming from. On July 3, 1969, Kalmbach heard that Abplanalp would lend the money to the President, and told DeMarco to prepare the note. DeMarco said that the down payment was accomplished by the transfer of \$100,000 from the President's personal account in Key Biscayne (a check signed for the President by Claudia Val of Vincent Andrews, Inc.) and from a \$450,000 loan to the President from Robert Abplanalp.

Also during the summer of 1969, work was being done on setting up the Nixon Foundation. DeMarco said that the organizational meeting of the trustees was held on September 3, 1969.

5. Meeting of October 8, 1969.

DeMarco said that on September 25, 1969, Kalmbach had a meeting in the White House with Morgan and Roger Barth, Assistant to the Commissioner of the Internal Revenue Service, and arranged

for them to meet with DeMarco on October 8, 1969. It was at that meeting, DeMarco now recalls, that Morgan told DeMarco about Newman, and suggested that he contact Newman in connection with the description and appraisal of the papers which had been delivered to the Archives the previous March. In addition, Morgan asked DeMarco to write an opinion on the California residency requirements for voting and on the payment of California income tax. Morgan told DeMarco at that meeting that they would have to get the appraisal done on the March, 1969 gift.

Also at that meeting, Barth was introduced as being available for information and assistance at the Internal Revenue Service. (DeMarco said that in November 1969, he did contact Barth after the exemption application for the Richard Nixon Foundation had been filed.) Barth explained to DeMarco and Morgan the way in which the tax returns the President, the Vice President, and the Speaker of the House were handled. After they had been prepared and signed, Barth explained, they were picked up by IRS personnel, processed by only three people, and stored in a confidential area in the IRS building. DeMarco said that while he had talked to Barth on the phone in May, 1969 (when DeMarco was in the office of John Davies, the Tour Director of the White House), this was the first time that he had met Barth in person.

DeMarco said that in remembering this meeting he can now explain the discrepancy between his original story and Ralph Newman's story as to when he first contacted Newman. He told us that although the notes taken during his first conversation with Newman were compatible with either on April or October initial contact, the fact that Newman's name was brought to his attention by Morgan during this meeting tends to affirm Newman's story that the first contact between them was made in October, 1969. DeMarco told us that he had not recalled this meeting when talking to the IRS or the staff of the Joint Committee on Internal Revenue Taxation.

6. Initial and subsequent contacts with Newman.

DeMarco said that soon after the meeting with Barth and Morgan, he contacted Newman. He reported that Newman said that he was going to remove "sensitive" material from the papers in the Archives. DeMarco said that while he later understood "sensitive" to mean expensive and valuable, at that time he believed that "sensitive" referred to materials concerning national security and items which would tend to embarrass or defame living persons. This is the first time, DeMarco said, that he remembered talking with Newman, and the first time that the sensitive material was mentioned. When asked how he rationalized the withdrawal of "sensitive" papers from the gift with his feeling that all the papers delivered to the

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Later, McNelis said that he had been called at 8:24 a.m. that morning by J. Fred Buzhardt, Counsel to the President, who said that the President waived his attorney-client privilege, only with respect to his conversation with DeMarco at the time he signed his 1969 tax returns on April 10, 1970, so that DeMarco could talk to us about that conversation if we asked.

1. The President as a client.

Mr. DeMarco said that on or about March 25 or 26, 1969, he was told by Herbert W. Kalmbach that their firm would be involved in doing the President's personal legal work in California, including work on the proposed purchase on the San Clemente estate and the proposed Nixon Foundation. In that conversation, or in one which occurred in the first part of April, DeMarco was told by Kalmbach, who was told by either Ehrlichman or Haldeman, that Edward L. Morgan, Deputy Counsel to the President, would coordinate the personal legal work to be done for the President.

On about March 28, 1969, DeMarco was telephoned by Morgan, who said that he would be coming out to California in the near future, and that he would want to work on three areas. The first was the proposed purchase of the San Clemente property; the second was the organization of a non-profit corporation, which

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eventually became the Nixon Foundation, which would sponsor the creation of a Library to eventually house the President's papers; and the third was the gift of papers which had been made by the President. Morgan told DeMarco that the papers gift was then being finalized, and that the papers had already been delivered to the National Archives as a gift for tax year 1969. (In talking to us, DeMarco said, "Morgan said they were going to -- they had made a 1969 gift." A Freudian slip, perhaps?) At about the same time, Kalmbach asked DeMarco to review title reports to the Cotton estate which the Cotton family had ordered in anticipation of a prior sale, to do a new title report, and draft escrow papers which would be used in the purchase of the Cottons' property at San Clemente.

2. The meeting of April 21, 1969.

DeMarco said that on April 21, 1969, he and Herbert Kalmbach met Morgan at the Century Plaza Hotel in Los Angeles for breakfast. He said that over the course of the day the San Clemente purchase, the Nixon Foundation, and the gift of papers were discussed. He said that Kalmbach does not remember any discussion of the gift of papers during the day and it is probably because Kalmbach was preoccupied with the subject of the San Clemente purchase. After a breakfast conference at the Century Plaza Hotel, they drove to San Clemente, where they met France Raine, the real estate broker who had found the property for the

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Exhibit I - 10

M E M O R A N D U M

To: Dr. Laurence Woodworth
Joint Committee on Internal Revenue Taxation

From: Frank DeMarco, Jr.

Re: Review of 1969-1972 Income Tax Returns
of President and Mrs. Richard M. Nixon

There follows herewith a brief statement of my best recollection at this time of certain of the events surrounding the activities of my office in connection with the preparation and filing of the subject income tax returns. Since some of the events occurred approximately five and four years ago, my recollection is, in some instances, not clear. In those instances where I have been able to refer to some other physical fact or event certain upon which to base my recollection, I have so stated.

I.

1969 Gift of Pre-Presidential Papers

My law firm's involvement in the personal business and tax affairs of the President commenced in early March 1969 when we were advised that the President desired to find a property in the Southern California beach area to make his home upon his retirement from the Presidency. In that connection, Herb Kalmbach, of this office, worked on the assignment and reported directly to John Ehrlichman. In the course of that assignment, Ehrlichman advised Kalmbach that the President desired to have other personal legal affairs handled in California, and Ehrlichman asked Kalmbach if our firm would undertake such engagements.

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During the month of March 1969, I was advised that Edward L. Morgan, Deputy Counsel to the President, would be the man in the White House and on the President's personal counsel staff with whom I should work in coordinating the President's personal legal affairs.

During the last two weeks of March and the first two weeks of April, 1969, my principal activity was in reviewing the title reports, surveys and other physical aspects of the San Clemente property which was proposed to be purchased. Mr. Kalmbach handled directly the negotiations with the sellers with respect to the terms of the sale. I was given the assignment of drafting the escrow instructions, which constituted the agreement of sale.

It was also during this same four-week period that I learned for the first time of the possible formation of a nonprofit corporation under California law to be known as The Richard Nixon Foundation. I was asked by Mr. Kalmbach, at the direction of Mr. Ehrlichman, to do preliminary research with respect to the requirements of qualification of such a foundation under California law. I was again advised that my contact on Ehrlichman's staff in connection with this matter would be Edward L. Morgan.

It is my best recollection that my first direct contact with Mr. Morgan occurred during the first week of April 1969 in a telephone call which I received from him

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and in which I was advised that the President had made a gift of certain of his pre-Presidential private papers which had theretofore been stored in the Executive Office Building. Morgan related to me in that conversation the history of a similar gift made by the President in December of 1968 which had been handled by himself and Richard Rittel of the Mudge, Rose law firm in New York. He advised that the President had used, for appraisal purposes, in order to satisfy the Internal Revenue Service as to the value of the gift, one Ralph G. Newman of Chicago who was a recognized appraiser of private papers. He told me that he had worked with Newman in connection with a very fast appraisal of the 1968 papers and that we would use Mr. Newman in connection with the valuation of the 1969 gift. I believe that in that conversation or shortly thereafter Mr. Morgan gave me the address and telephone number of Mr. Newman, or, in the alternative, such information was furnished me by Herb Kalmbach coming from Ed Morgan.

My next recollection is that a few days thereafter, probably the first few days of April 1969, I had a telephone conversation with Newman. I do not recall that I telephoned him or that he telephoned me. I recall in my first conversation with him he explained to me his appraisal procedure and confirmed what he had done in connection with the 1968 gift and that he was in fact currently finalizing his detailed appraisal of the 1968 gift for purposes of the 1968 income tax return for the

Morgan does not recall now whether or not they talked about the gift nor does he recall specific conversations about the apartment sale. He does recall, however, talking about the Nixon Foundation. Morgan now thinks that the papers could have been discussed at that meeting, and this meeting may be the source of Morgan's recollection of the \$500,000 figure. As Morgan recalls, Krogh went to Washington to report to Ehrlichman. but Morgan stayed in New York.

9. Meeting With Haldeman and Ehrlichman.

Morgan also remembers that before he went to California in April 1969 he met with Ehrlichman and Haldeman in Ehrlichman's office. Morgan was going to California, in part to meet with the Whittier College people to look around the college site ostensibly searching for a site for the President's library.

Morgan now thinks that the gift of papers must have come up in this meeting with Haldeman and Ehrlichman but maybe not, he just doesn't remember any such discussion. Morgan knew he was going out to the coast to meet with Kalmbach or DeMarco, and Haldeman and Ehrlichman informed Morgan that Kalmbach and DeMarco would be taking over the President's financial affairs. Haldeman and Ehrlichman told Morgan that the President intended to leave California and that he wanted nothing more to do with New York and that Kalmbach and DeMarco would therefore succeed Mudge, Rose as Nixon's lawyers. Haldeman and Ehrlichman further told Morgan that Kalmbach and DeMarco were "family" with whom anything could be discussed.

[Morgan does not remember telephoning DeMarco before going to California, although he thinks that he must have spoken with DeMarco before leaving Washington.

Mr. Kalmbach indicated that after April Mr. DeMarco and Mr. Morgan were in close contact on tax matters, and that he was not, but rather that he was specifically involved in the negotiations on the San Clemente property.

DeMarco version.—Frank DeMarco's written statement to the staff dated February 5, 1974 (Exhibit I-10) indicates that his law firm's involvement in the personal business and tax affairs of the President commenced in early March 1969, when they were advised that the President desired to find property in the southern California beach area "to make his home upon his retirement from the presidency." He said that Herb Kalmbach worked on this and reported directly to Mr. Ehrlichman. Mr. DeMarco stated that Mr. Ehrlichman advised Mr. Kalmbach during the course of that assignment that the President desired to have other personal legal affairs handled in California and Mr. Ehrlichman asked Mr. Kalmbach if their law firm would undertake this work.

Mr. DeMarco indicated further that during the month of March Mr. Kalmbach advised him that Mr. Morgan, who was the deputy counsel to the President, would be the man in the White House and on the President's personal staff with whom he was to work in coordinating the President's personal legal affairs.

Mr. DeMarco indicated that during the last 2 weeks of March and the first 2 weeks of April 1969, his principal activity was in reviewing the title reports, surveys and other details relating to the proposed purchase of the San Clemente property. He said that Mr. Kalmbach handled the negotiations with respect to the terms of the sale directly with the sellers, and he was assigned to draft the escrow instructions.

He indicated that it was during this 4-week period that he learned for the first time of the possible formation of the Richard Nixon Foundation, which was to be a nonprofit corporation in the California law. He said that he was asked by Mr. Kalmbach at the direction of Mr. Ehrlichman to do preliminary research with respect to the requirements of qualification of the foundation under California law. He was advised again that Mr. Morgan was to be his contact on this matter.

Alleged discussion of gift in early April 1969 by Morgan and DeMarco

In his statement to the staff, Mr. DeMarco indicated that to his "best recollection" his first direct contact with Mr. Morgan occurred during the first week of April 1969 in a telephone call which he received from him and in which he was advised that the President had made a gift of certain of his pre-Presidential papers which had been stored in the Executive Office Building. DeMarco stated that he believed that a gift had been made of all papers which had been shipped to the Archives. Mr. DeMarco indicated that Morgan related to him the history of the 1968 gift and advised him that for appraisal purposes the President had used Ralph G. Newman from Chicago, who was a recognized appraiser of private papers. Mr. DeMarco said further that Mr. Morgan indicated they would use Mr. Newman in connection with the valuation of the 1969 gift and that he believes either Mr. Morgan or Mr. Kalmbach furnished him the information how to reach Mr. Newman. (Mr. Kalmbach has told the staff that he did not discuss the papers with Mr. DeMarco.)

Mr. DeMarco also indicated in his statement that his recollection is that a \$500,000 figure came from his first conversation with Mr. Morgan "in which he (Morgan) indicated to me that that was the general amount of the gift that had been made." In his earlier meeting with the staff, Mr. DeMarco said that they had assumed an adjusted gross income of \$300,000, a figure he said Mr. Morgan had gotten from Vincent Andrews, Inc., so that the maximum usable deduction would be \$90,000 (30 percent of \$300,000) per year or \$540,000 for the full 6 years. He said that they thought of this as a "ball park" figure. (See below Determination of \$500,000 figure by DeMarco.)

This is the first mention of a \$500,000 figure of which the staff is aware. It should be noted, as indicated above, that Mr. DeMarco did say that it is his "best recollection" that his first direct contact with Mr. Morgan occurred during the first week of April 1969.

Mr. Morgan, however, told the staff that he does not recall this conversation in early April with DeMarco, nor does he remember discussing a \$500,000 figure. He said this both in his interview with the staff and in his written statement to the White House dated August 14, 1973 (Exhibit I-9). In this statement to the White House he said:

"In April, I made a trip to California regarding several matters. Apparently, Mr. DeMarco indicates that I called him and said the President wanted to make a gift of about \$500,000. I have no reason to doubt this, although I do not have a specific recollection of that call. I do remember that there was considerable work being done regarding the President's estate, his property, etc. in contemplation of the San Clemente purchase, so it seems logical to me that we were working on his tax situation at that time and decided to make the next gift."

DeMarco's alleged telephone call to Newman in April 1969

DeMarco's version.—In his statement to the staff (Exhibit I-10), Mr. DeMarco indicated that a few days after his telephone call to Mr. Morgan in early April, he had a telephone conversation with Mr. Newman but does not recall whether he called Mr. Newman or Mr. Newman called him. Mr. DeMarco stated that in his first conversation, Mr. Newman explained to him his appraisal procedure, confirmed with him what had been done in connection with the 1968 gift, and said that "he was, in fact, currently finalizing his detailed appraisal of the 1968 gift for purposes of the 1968 income tax return for the President."

Mr. DeMarco said further that from his best recollection from the conversation, Mr. Newman said that he would go to Washington within the next few days and "commence the work because he was planning to leave for an extended tour of Australia or Japan, I am not sure which, later in the month." Mr. DeMarco said that it was in that conversation that he discussed the value of the 1968 gift and he related to Mr. Newman that the estimated size of the 1969 gift was \$500,000, a figure based on the President's anticipated income.

Mr. DeMarco indicated in his statement that he "cannot be absolutely certain at this time of the exact date of the telephone conversation with Ralph Newman." He said that he based his recollection of the conversation and the date on certain other occurrences which he listed as follows:

that upon receiving this memorandum on May 1, and if he signed a deed on April 21, he probably would have wanted to make a note with someone at the Archives about the gift in view of all his contact with Archives personnel during this period, as noted above.

B. EDWARD MORGAN'S TRIP TO CALIFORNIA, APRIL 1969

Prior to April 1969, President Nixon's legal work had been handled by his former law firm, Mudge, Rose, Guthrie, and Alexander, and his tax work had been done by Vincent Andrews, Inc. In his interview with the staff, Herbert Kalmbach said that in March 1969, H. R. Haldeman told him that the President wanted to buy a house in California and wanted Mr. Kalmbach's law firm, Kalmbach, DeMarco, Knapp, and Chillingworth, to do the legal work involved. Mr. Kalmbach said that in April 1969, John Ehrlichman told him that the President wanted the Kalmbach firm to do his tax work and to help set up the Nixon Foundation. He said that Mr. Ehrlichman told him that Edward Morgan was the man on his staff handling the President's personal finances and that Mr. Kalmbach should work through him. Both Mr. Kalmbach and Mr. DeMarco told the staff that in March and early April 1969, Mr. Kalmbach related this information to Mr. DeMarco, which, Mr. DeMarco says, is the first time he ever heard of Mr. Morgan. Mr. DeMarco said that since he was more of a "practicing lawyer" than Mr. Kalmbach, they agreed that he should do most of the legal work.

DeMarco's Statement to the Staff.—In his written statement to the staff (Exhibit I-10), Mr. DeMarco gave the following account of Mr. Morgan's trip to California in April 1969:

"During the week of April 14-18, 1969, I believe I had another phone conversation with Morgan relating to the President's personal affairs, and including primarily the purchase of the San Clemente property, the formation of The Nixon Foundation to construct a Presidential library and the gift of private papers. It is my recollection that Morgan indicated he would be in Los Angeles from April 19 through the 22nd, and accordingly it was arranged for us to meet in person on the morning of April 21, 1969 for the purpose of inspecting the San Clemente property, discussing The Nixon Foundation and the gift of papers and reviewing documentation concerning these matters. . . .

"Prior to Morgan's arrival, I prepared a draft of proposed Articles of Incorporation for The Nixon Foundation. I had prepared the draft of the escrow instructions for purchase of the San Clemente property and a draft of a proposed form of chattel deed to cover the gift made on March 27, 1969. On the morning of April 21, 1969, Herb Kalmbach and I met Mr. Morgan in the lobby of the Century Plaza Hotel in Los Angeles. We had an extensive breakfast meeting wherein we reviewed the pending matters, including the gift, the Foundation and the San Clemente property. It is my recollection that Morgan had indicated that he would, or at least I had expected him to, bring with him copies of whatever 'receipts' he received from the Archives upon delivery of the March 27, 1969 papers. During the course of our conversation on April 21, 1969 it was apparent that Morgan had no 'receipts' or other documentation from the Archives. Accordingly, we had no

detailed list of the subject matter of the gift to attach to the form of the deed. During the course of the morning, I wrote out in long-hand what I suggested we use as a Schedule 'A' to the chattel deed so as to at least block out the general value and general description of the papers and providing that a more detailed list would be supplied after the appraisal. In the course of that conversation Morgan indicated to me that the appraiser, as part of his duties would prepare a detailed schedule which could be used as the Schedule describing the subject matter of the gift. It was our feeling at that time that there would probably not be much delay in obtaining the detailed description.

"Ed Morgan, Herb Kalmbach and I spent the entire day together on April 21, 1969. We proceeded from the Century Plaza Hotel, Los Angeles, by car to San Clemente where we inspected the property and later we paid a visit to our law firm's Newport Beach office. It is my recollection that sometime during the day when we were reviewing documentation, Morgan signed the form of the chattel deed which I had prepared, although we had no itemized description of the papers. It is my belief that the typewritten description of the materials as set forth in the first Schedule 'A' was prepared by me on a typewriter at the Newport Beach office. (A copy has been furnished you previously.)

"The escrow instructions, the draft of Articles of Incorporation of The Nixon Foundation and the first form of chattel deed to which I had referred to above, were typed on the same typewriter in our Los Angeles office. I had intended to make additional xerox copies of that chattel deed prior to execution by Mr. Morgan on April 21, 1969 after I had viewed what I had been referring to as the "receipts" received from the Archives. When I discovered he did not have such 'receipts' and we decided upon the summary form of Schedule 'A' referred to above, I did not make additional xerox copies, but instead chose to wait until the data for the final Schedule "A" was received."

Thus, according to Mr. DeMarco, he prepared a deed for a 1969 gift of papers in April 1969, and Edward Morgan signed it for President Nixon on April 21, 1969. In his interview with the staff, Mr. DeMarco said that he and Mr. Morgan discussed the question of whether it was appropriate for Mr. Morgan to sign documents for the President. Mr. DeMarco said that Mr. Morgan told him that Morgan had such authority and showed him the rights of access to the 1968 papers that he had signed, as well as papers he had signed relating to the sale of the President's Fisher's Island stock. Mr. DeMarco said that he took Morgan's word for this and, in any case, did not think the deed to be very important since its purpose was only to "memorialize" a gift that had already occurred on March 27, 1969.

Mr. DeMarco's assertion that he prepared both the deed for Mr. Morgan's signature and the affidavit that Mr. Morgan had the authority to sign the deed seems questionable in the light of his statement that he did not know that Mr. Morgan had the authority to sign until their April 21, 1969, meeting. It is also unclear why Mr. DeMarco wanted receipts from the Archives, since in the case of the 1968 deed, the schedule was clearly prepared by a privately-hired appraiser, and Mr. DeMarco had a copy of the 1968 deed when he prepared the 1969

deed. Finally, Mr. DeMarco's belief that the gift occurred on March 27, 1969, seems somewhat inconsistent with his own notes of his phone conversation with Mr. Newman (Exhibit I-23) in which he refers to segregation of the material (presumably to be given) by Mr. Newman.

DeMarco says that he does not now have the deed or any drafts of the deed that, he says, he prepared and Morgan signed in April 1969. He has furnished the staff with a copy of the Schedule A he says he prepared on April 21, 1969 (Exhibit I-12).

DeMarco Staff Interview.—In his interview with the staff, which occurred before he prepared his written statement, Mr. DeMarco's account of the events of April 21, 1969, was somewhat different than in the written statement. In that interview, Mr. DeMarco said that he had prepared a rough draft of the deed in anticipation of Mr. Morgan's visit. This draft, he said, included crossed-out words and was clearly not in shape to be executed. Mr. DeMarco said that his plan was that when Mr. Morgan brought the receipts for the papers from the Archives, they could prepare a final version of the deed, which Mr. Morgan could then sign. Mr. DeMarco stated that Mr. Morgan's failure to bring any such receipts caused him to abandon his original plan of signing the deed that day.

DeMarco California Deposition.—In a sworn statement before the Secretary of State of the State of California on January 30, 1974, Mr. DeMarco related essentially the same facts contained in his written statement to the Joint Committee staff.

Morgan Statement to White House.—On August 14, 1973, Mr. Morgan wrote a memorandum (Exhibit I-9) to Douglas Parker of the White House staff setting forth his basic recollection of the facts pertaining to the President's gifts of papers. The narrative of his California meeting with Messrs. Kalmbach and DeMarco is as follows:

"On Monday, April 21, I met Mr. Kalmbach and Mr. DeMarco at the Century Plaza, where I was staying, and drove to the Newport Beach area. I recall that we drove to San Clemente and looked at the property which is now the President's residence there. I recall spending some time at Mr. Kalmbach's law office discussing and working on all of the matters on which I was in California. This may have even included the question of the historical site status for Yorba Linda.

"There is absolutely no question in my mind that I signed the deed of gift for the President at that time. The thing that I do not remember is whether or not there was any particular schedule attached to the deed at that time, and if so, its contents.

"Since I had not personally supervised the transfer or the inventory of the materials subject to the gift, the schedule would have really meant very little to me anyway."

Morgan Staff Interview.—In his interview with the staff, Mr. Morgan related essentially the same basic facts as in his statement to the White House. He said he was "98 percent certain" that he signed the deed on April 21, 1969. He said he remembers Mr. DeMarco's telling him that the deed was "memorializing" a gift that had already been made.

Mr. Morgan said that no one at the White House gave him specific authority to sign the deed but that Mr. DeMarco told him it was appropriate.

Kalmbach Staff Interview.—In his interview with the staff, Herbert Kalmbach stated that he was present during most, but not all, of the April 21, 1969, meeting with Messrs. Morgan and DeMarco. He does not recall any discussion of a deed, nor does he recall Mr. DeMarco's typing anything. He said he does recall Mr. Morgan's signing something but does not remember what he signed. Mr. Kalmbach said that he remembers no discussion of the President's papers at the meeting and does not believe he even knew of a gift at that time.

Kalmbach California Deposition.—In a sworn statement before the California Secretary of State on February 21, 1974, Mr. Kalmbach has related essentially the same facts given to the Joint Committee staff in his interview.

Ehrlichman Staff Interview.—John Ehrlichman told the staff that he gave Mr. Morgan no specific guidelines on what to sign and that Mr. Morgan was instructed to burden him and the President as little as possible with the details of the President's personal finances. Mr. Ehrlichman said that, as far as he was concerned, Mr. Morgan had the authority to sign the deed even though he received no specific instructions and had no power of attorney. Mr. Ehrlichman says he recalls no discussion of a deed in March or April 1969.

Receipt of 1968 Deed by DeMarco

Mr. DeMarco told the staff that he prepared the deed for the second gift of papers with the aid of the 1968 deed. The two deeds are identical in many respects, the main differences being that the 1969 deed was prepared for Mr. Morgan's signature, not President Nixon's, and did not contain a line for signature by the General Services Administration. It is clear, then, that Mr. DeMarco could not have prepared the 1969 deed until after he received a copy of the 1968 deed.

In his written statement to the staff, Mr. DeMarco said:

"Prior to his [Morgan's] arrival, I received either from Mr. Morgan or from Mr. Kalmbach copies of the 1968 gift documents and the access rights documents which had been used in connection with such a gift."

In their interviews with the staff neither Mr. Morgan nor Mr. Kalmbach recall sending the 1968 deed to Mr. DeMarco in April 1969. The staff has questioned all of the other individuals whom it knows had copies of the 1968 deed before April 1969, including Richard Ritzel, Martin Feinstein, and the people at the National Archives, in an effort to find out if any of them recall sending a copy to Mr. DeMarco or Mr. Kalmbach at that time. The staff has also questioned Mr. Ehrlichman, who may have acted as a conduit in sending the 1968 deed to Mr. DeMarco. The staff has not been able to determine who, if anyone, sent Mr. DeMarco the 1968 deed in April 1969.

Staff Analysis

For purposes of determining the validity of tax deductions, the burden of proof is on the taxpayer, not the Government. The only evidence that Mr. DeMarco prepared and Mr. Morgan signed a deed of gift for the second gift of papers on April 21, 1969, is the statements of Messrs. DeMarco and Morgan to that effect. The staff has received only one written document purporting to relate or even refer to this deed—the draft of the Schedule A that Mr. DeMarco said he prepared on April 21, 1969. The deed itself, if it existed, was, appar-

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Exhibit I - 9




ASSISTANT SECRETARY

THE DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

August 14, 1973

MEMORANDUM FOR: MR. DOUGLAS PARKER

FROM: EDWARD L. MORGAN 

SUBJECT: President's Papers

Attached is a memorandum setting forth my
basic recollection of the facts regarding the
President's papers.

Attachment

A-160

1968

In late November, after the election, I began working for John Ehrlichman. Beginning in December, I coordinated some of the President's personal affairs, among other things.

Regarding Mr. Nixon's papers in particular, I recall that Miss Lowie Gaunt came to New York to assist in their identification.

Most of the papers were located in the warehouse of Mudge, Rose, Guthrie & Alexander. Mr. Richard Ritzel and Mr. Pat Tannian were the two lawyers at that firm who were handling the President's affairs. There could have been others of whom I was not generally aware; particularly, senior partners who could have been discussing matters directly with Mr. Nixon. I did not deal directly with the President.

I recall that the papers were transferred to a large unoccupied office at the firm where Mr. Ralph Newman worked on them. I do not know who retained Mr. Newman. I remember meeting him one evening with Mr. Ritzel and Mr. Tannian.

I do remember that the work was done between Christmas and New Year's. In fact, I may have been the one who assisted simply because I was one of the few who did not go home or leave New York for Christmas.

Basically, I was reporting to Mr. Ehrlichman that all was "on track" per Messrs. Ritzel and Tannian.

I am certain that I never saw the President's tax return, although I am certain that I did see the deed of gift that was prepared by the law firm.

I do not recall who made the arrangements for delivery of the deed or for the actual transfer of the materials to GSA.

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- 2 -

1969

Early in the year, the President decided to have all of his personal affairs handled by the firm of Kalmbach and DeMarco in California. I believe that all of the accounting functions formerly handled by the Vinney Andrews accounting firm in New York were also transferred to Kalmbach and DeMarco.

In February and early March, I was in Europe handling the arrangements for the President's trip.

I coordinated the transfer of the balance of the President's papers to GSA and the Archives which occurred on March 27, 1969, although I did not supervise the actual transaction.

In April, I made a trip to California regarding several matters. Apparently, Mr. DeMarco indicates that I called him and said the President wanted to make a gift of about \$500,000. I have no reason to doubt this, although I do not have a specific recollection of that call. I do remember that there was considerable work being done regarding the President's estate, his property, etc. in contemplation of the San Clemente purchase, so it seems logical to me that we were working on his tax situation at that time and decided to make the next gift.

Nonetheless, on that trip to California, which I believe was April 18 to 22, I was engaged in several things. I believe that on the 19th I spent part of the day at Whittier College regarding the Nixon Library and also attended a meeting in the College president's office to discuss the formation of a "Nixon Chair."

On Saturday evening, the 19th, I attended a Nixon Foundation meeting at the home of Mr. Taft Schreiber.

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- 3 -

On Monday, April 21, I met Mr. Kalmbach and Mr. DeMarco at the Century Plaza, where I was staying, and drove to the Newport Beach area. I recall that we drove to San Clemente and looked at the property which is now the President's residence there. I recall spending some time at Mr. Kalmbach's law office discussing and working on all of the matters on which I was in California. This may have even included the question of the historical site status for Yorba Linda.

There is absolutely no question in my mind that I signed the deed of gift for the President at that time. The thing that I do not remember is whether or not there was any particular schedule attached to the deed at that time, and if so, its contents.

Since I had not personally supervised the transfer or the inventory of the materials subject to the gift, the schedule would have really meant very little to me anyway.

1970

I have no specific recollection of an inquiry from GSA about the whereabouts of the deed. I do think I remember calling Frank DeMarco about it, but I'm not sure. I assume that he mailed it to me and I gave it to GSA, or he mailed it to GSA directly. Nonetheless, I have no reason to dispute anyone else's recollection of the matter.

I would add only that I have had, and continue to have, the highest personal and professional regard for Mr. Ritzel, Mr. Tannian, Mr. Kalmbach and Mr. DeMarco.

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Exhibit I - 10

M E M O R A N D U M

To: Dr. Laurence Woodworth
Joint Committee on Internal Revenue Taxation

From: Frank DeMarco, Jr.

Re: Review of 1969-1972 Income Tax Returns
of President and Mrs. Richard M. Nixon

There follows herewith a brief statement of my best recollection at this time of certain of the events surrounding the activities of my office in connection with the preparation and filing of the subject income tax returns. Since some of the events occurred approximately five and four years ago, my recollection is, in some instances, not clear. In those instances where I have been able to refer to some other physical fact or event certain upon which to base my recollection, I have so stated.

I.

1969 Gift of Pre-Presidential Papers

My law firm's involvement in the personal business and tax affairs of the President commenced in early March 1969 when we were advised that the President desired to find a property in the Southern California beach area to make his home upon his retirement from the Presidency. In that connection, Herb Kalmbach, of this office, worked on the assignment and reported directly to John Ehrlichman. In the course of that assignment, Ehrlichman advised Kalmbach that the President desired to have other personal legal affairs handled in California, and Ehrlichman asked Kalmbach if our firm would undertake such engagements.

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that Morgan indicated he would be in Los Angeles from April 19 through the 22nd, and accordingly it was arranged for us to meet in person on the morning of April 21, 1969 for the purpose of inspecting the San Clemente property, discussing The Nixon Foundation and the gift of papers and reviewing documentation concerning these matters. Prior to his arrival, I received either from Mr. Morgan or from Mr. Kalmbach copies of the 1968 gift documents and the access right documents which had been used in connection with such gift.

Prior to Morgan's arrival, I prepared a draft of proposed Articles of Incorporation for The Nixon Foundation. I had prepared the draft of the escrow instructions for purchase of the San Clemente property and a draft of a proposed form of chattel deed to cover the gift made on March 27, 1969. On the morning of April 21, 1969, Herb Kalmbach and I met Mr. Morgan in the lobby of the Century Plaza Hotel in Los Angeles. We had an extensive breakfast meeting wherein we reviewed the pending matters, including the gift, the Foundation and the San Clemente property. It is my recollection that Morgan had indicated that he would, or at least I had expected him to, bring with him copies of whatever "receipts" he received from the Archives upon delivery of the March 27, 1969 papers. During the course of our conversation on April 21, 1969 it was apparent that Morgan had no "receipts" or other documentation from the Archives. Accordingly, we had no detailed list of the subject matter of the gift to attach to the form of the deed. During

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the course of the morning, I wrote out in longhand what I suggested we use as a Schedule "A" to the chattel deed so as to at least block out the general value and general description of the papers and providing that a more detailed list would be supplied after the appraisal. In the course of that conversation Morgan indicated to me that the appraiser, as part of his duties would prepare a detailed schedule which could be used as the Schedule describing the subject matter of the gift. It was our feeling at that time that there would probably not be much delay in obtaining the detailed description.

Ed Morgan, Herb Kalmbach and I spent the entire day together on April 21, 1969. We proceeded from the Century Plaza Hotel, Los Angeles, by car to San Clemente where we inspected the property and later we paid a visit to our law firm's Newport Beach office. It is my recollection that sometime during the day when we were reviewing documentation, Morgan signed the form of the chattel deed which I had prepared, although we had no itemized description of the papers. It is my belief that the typewritten description of the materials as set forth in the first Schedule "A" was prepared by me on a typewriter at the Newport Beach office. (A copy has been furnished you previously.)

The escrow instructions, the draft of Articles of Incorporation of The Nixon Foundation and the first form of chattel deed to which I had referred to above, were typed on the same typewriter in our Los Angeles office.

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I had intended to make additional xerox copies of that chattel deed prior to execution by Mr. Morgan on April 21, 1969 after I had viewed what I had been referring to as the "receipts" received from the Archives. When I discovered he did not have such "receipts" and we decided upon the summary form of Schedule "A" referred to above, I did not make additional xerox copies, but instead chose to wait until the data for the final Schedule "A" was received.

I spent May 6 and 7 of 1969 in Washington, D.C. I recall meeting with Edward Morgan briefly on May 6, 1969 and again discussing with him the gift of papers, the delivery of the papers to the Archives and the fact that we would be needing the detailed list of donated papers. Upon my return from that trip, and sometime after May 12, 1969 but before May 31, 1969, I had a telephone conversation with Arthur Blech, C.P.A., the accountant we eventually selected to work with our firm on the President's taxes. I advised him of the possibility that he would be working with me in preparing the President's tax returns and in setting up financial records for the President. In that telephone conversation I posed a hypothetical question and asked him to run some projections for me which I intended to use as confirmation of my original thoughts respecting the maximum amount of charitable contribution the President could use. I told Mr. Blech that I had a client who was making a \$500,000 charitable contribution and that he had an approximate adjusted gross income of

1 early '69, first half of '69, that the President intended
2 to make a deed of documents to the Archives and to claim a
3 tax deduction on that gift?

4 A It's my recollection that on April 21 of 1969,
5 Mr. DeMarco and I met with Mr. Morgan at the Century Plaza
6 Hotel in Los Angeles for breakfast; and after an hour-and-
7 a-half or two-hour breakfast, we drove to San Clemente, I
8 think it was in separate cars. And then I believe we met
9 in the firm's Newport Beach office. I can't recall speci-
10 fically if any mention was made during those meetings of the
11 gift of papers, I cannot recall at this point.

12 Q Well, did you have any knowledge either from
13 that meeting or from any other source that a gift of papers
14 was being contemplated?

15 A I can't remember that I did. My function
16 was wholly apart from the President's tax work. And Mr.
17 DeMarco and I officed in separate offices, he in Los Angeles,
18 I was officed in Newport Beach. And I don't recall that I
19 was knowledgeable at all as to matters involving the
20 President's tax work.

21 Q Well, were you aware that Mr. DeMarco had
22 prepared a deed in connection with a gift of papers prior
23 to that meeting of April 21?

24 A I can't be certain on that point, Mr.
25 Lowenstein.

26 Q Were you present with Mr. DeMarco and Mr.
27 Morgan during the entire day of April 21?

28 A No, not for the entire day. I think that

1 it was best, since we were just getting into doing his
2 work, that it be confined to the one girl.

3 Q Was the deed that was prepared during that
4 week executed?

5 A During the course of that day, it's my
6 recollection that Morgan did sign that deed.

7 Q When you say "that day," which day --

8 A April 21, 1969. We had several documents
9 that day that we were going over. We had this form of deed,
10 we had a draft of Articles of Incorporation of the Richard
11 Nixon Foundation, and we had the escrow instructions on
12 the purchase of the San Clemente property, and various
13 title documents in connection with that purchase. And I have
14 a recollection of him signing it that day and going over the
15 other documents. There weren't any other documents that we
16 looked at that day that called for his signature.

17 Q In cases --

18 A It was five years ago, and that's my recollec-
19 tion.

20 Q In the case of the deed, the donor was
21 President Nixon, was he not?

22 A Yes.

23 Q And the deed purported to be a transfer from
24 President Nixon to the Archives?

25 A It covered the material that had been deliv-
26 ered, it was my understanding, on the 27th of March, 1969.
27 And it was also my understanding that Mr. Morgan was acting
28 in his capacity as an agent, Deputy Counsel for the President,

1 in making the delivery.

2 Q The point I'm getting at is: Although the
3 deed was from President Nixon to the Archives, it was not
4 signed by President Nixon, was it?

5 A No, it was signed by Mr. Morgan, as Deputy
6 Counsel to the President.

7 Q How was that arranged in the document itself?

8 A I couldn't quite follow that question.

9 Q Well, was there anything in the document that
10 provided an explanation of why a deed from Nixon to the
11 Archives was being signed by Morgan? Was there an authoriza-
12 tion --

13 A Well, I think in one of the pages of the
14 deed, there is a recitation that he was a Deputy Counsel
15 for the President and that he was authorized to and did on
16 a certain day make this transfer of papers on behalf of
17 the President.

18 Q And did he sign that document or that page?

19 A I don't really know whether he signed all --
20 the final form of that deed called for his signature in
21 three places, as I recall, and I really don't know. I don't
22 have any distinct recollection of that. I just don't know
23 whether he signed in two or three different places. I know
24 he signed the grant part, the main part of the deed, as I
25 recall.

26 Q Did you say there was a total of two signatures
27 or three signatures by Mr. Morgan?

28 A Well, maybe there was only two signatures by

1 Mr. Morgan. He had to sign the deed more than once, I know
2 that.

3 Q And was there also a space for a notary's
4 signature?

5 A Yes, sir.

6 Q Did you notarize the document?

7 A Well, I don't feel -- my recollection at this
8 time is that I did not affix my signature, I just don't
9 recall that I did, to that form of the deed. And it's
10 difficult to explain some of these things without going
11 into the entire history of the transaction, but the form
12 of the deed presented on April 21, 1969 was not the final
13 form because, as you can see from the Exhibit 1 you have
14 examined, that it contemplated a further schedule, a detailed
15 description be attached to the deed.

16 Q Well, you met with Mr. Morgan on April 21?

17 A Yes, sir.

18 Q He ordinarily worked in Washington, did he not?

19 A Yes.

20 Q Where did you meet with --

21 MR. McNELIS: Excuse me. I know Frank was answering
22 that "Yes," but while Mr. Morgan's home base may have been
23 in Washington, Mr. Morgan could be all over the country.

24 MR.. LOWENSTEIN: All I meant was he was not ordinarily
25 located in Southern California.

26 MR. McNELIS: Oh, fine.

27 THE WITNESS: To my knowledge, no, he was not, he
28 worked in the Executive Office Building in the White House.

that upon receiving this memorandum on May 1, and if he signed a deed on April 21, he probably would have wanted to make a note with someone at the Archives about the gift in view of all his contact with Archives personnel during this period, as noted above.

B. EDWARD MORGAN'S TRIP TO CALIFORNIA, APRIL 1969

Prior to April 1969, President Nixon's legal work had been handled by his former law firm, Mudge, Rose, Guthrie, and Alexander, and his tax work had been done by Vincent Andrews, Inc. In his interview with the staff, Herbert Kalmbach said that in March 1969, H. R. Haldeman told him that the President wanted to buy a house in California and wanted Mr. Kalmbach's law firm, Kalmbach, DeMarco, Knapp, and Chillingworth, to do the legal work involved. Mr. Kalmbach said that in April 1969, John Ehrlichman told him that the President wanted the Kalmbach firm to do his tax work and to help set up the Nixon Foundation. He said that Mr. Ehrlichman told him that Edward Morgan was the man on his staff handling the President's personal finances and that Mr. Kalmbach should work through him. Both Mr. Kalmbach and Mr. DeMarco told the staff that in March and early April 1969, Mr. Kalmbach related this information to Mr. DeMarco, which, Mr. DeMarco says, is the first time he ever heard of Mr. Morgan. Mr. DeMarco said that since he was more of a "practicing lawyer" than Mr. Kalmbach, they agreed that he should do most of the legal work.

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"Ed Morgan, Herb Kalmbach and I spent the entire day together on April 21, 1969. We proceeded from the Century Plaza Hotel, Los Angeles, by car to San Clemente where we inspected the property and later we paid a visit to our law firm's Newport Beach office. It is my recollection that sometime during the day when we were reviewing documentation, Morgan signed the form of the chattel deed which I had prepared, although we had no itemized description of the papers. It is my belief that the type-written description of the materials as set forth in the first Schedule 'A' was prepared by me on a typewriter at the Newport Beach office. (A copy has been furnished you previously.)

"The escrow instructions, the draft of Articles of Incorporation of The Nixon Foundation and the first form of chattel deed to which I had referred to above, were typed on the same typewriter in our Los Angeles office. I had intended to make additional xerox copies of that chattel deed prior to execution by Mr. Morgan on April 21, 1969 after I had viewed what I had been referring to as the "receipts" received from the Archives. When I discovered he did not have such 'receipts' and we decided upon the summary form of Schedule 'A' referred to above, I did not make additional xerox copies, but instead chose to wait until the data for the final Schedule "A" was received."

Thus, according to Mr. DeMarco, he prepared a deed for a 1969 gift of papers in April 1969, and Edward Morgan signed it for President Nixon on April 21, 1969. In his interview with the staff, Mr. DeMarco said that he and Mr. Morgan discussed the question of whether it was appropriate for Mr. Morgan to sign documents for the President. Mr. DeMarco said that Mr. Morgan told him that Morgan had such authority and showed him the rights of access to the 1968 papers that he had signed, as well as papers he had signed relating to the sale of the President's Fisher's Island stock. Mr. DeMarco said that he took Morgan's word for this and, in any case, did not think the deed to be very important since its purpose was only to "memorialize" a gift that had already occurred on March 27, 1969.

Mr. DeMarco's assertion that he prepared both the deed for Mr. Morgan's signature and the affidavit that Mr. Morgan had the authority to sign the deed seems questionable in the light of his statement that he did not know that Mr. Morgan had the authority to sign until their April 21, 1969, meeting. It is also unclear why Mr. DeMarco wanted receipts from the Archives, since in the case of the 1968 deed, the schedule was clearly prepared by a privately-hired appraiser, and Mr. DeMarco had a copy of the 1968 deed when he prepared the 1969

deed. Finally, Mr. DeMarco's belief that the gift occurred on March 27, 1969, seems somewhat inconsistent with his own notes of his phone conversation with Mr. Newman (Exhibit I-23) in which he refers to segregation of the material (presumably to be given) by Mr. Newman.

DeMarco says that he does not now have the deed or any drafts of the deed that, he says, he prepared and Morgan signed in April 1969. He has furnished the staff with a copy of the Schedule A he says he prepared on April 21, 1969 (Exhibit I-12).

DeMarco Staff Interview.—In his interview with the staff, which occurred before he prepared his written statement, Mr. DeMarco's account of the events of April 21, 1969, was somewhat different than in the written statement. In that interview, Mr. DeMarco said that he had prepared a rough draft of the deed in anticipation of Mr. Morgan's visit. This draft, he said, included crossed-out words and was clearly not in shape to be executed. Mr. DeMarco said that his plan was that when Mr. Morgan brought the receipts for the papers from the Archives, they could prepare a final version of the deed, which Mr. Morgan could then sign. Mr. DeMarco stated that Mr. Morgan's failure to bring any such receipts caused him to abandon his original plan of signing the deed that day.

DeMarco California Deposition.—In a sworn statement before the Secretary of State of the State of California on January 30, 1974, Mr. DeMarco related essentially the same facts contained in his written statement to the Joint Committee staff.

Morgan Statement to White House.—On August 14, 1973, Mr. Morgan wrote a memorandum (Exhibit I-9) to Douglas Parker of the White House staff setting forth his basic recollection of the facts pertaining to the President's gifts of papers. The narrative of his California meeting with Messrs. Kalmbach and DeMarco is as follows:

"On Monday, April 21, I met Mr. Kalmbach and Mr. DeMarco at the Century Plaza, where I was staying, and drove to the Newport Beach area. I recall that we drove to San Clemente and looked at the property which is now the President's residence there. I recall spending some time at Mr. Kalmbach's law office discussing and working on all of the matters on which I was in California. This may have even included the question of the historical site status for Yorba Linda.

"There is absolutely no question in my mind that I signed the deed of gift for the President at that time. The thing that I do not remember is whether or not there was any particular schedule attached to the deed at that time, and if so, its contents.

"Since I had not personally supervised the transfer or the inventory of the materials subject to the gift, the schedule would have really meant very little to me anyway."

Morgan Staff Interview.—In his interview with the staff, Mr. Morgan related essentially the same basic facts as in his statement to the White House. He said he was "98 percent certain" that he signed the deed on April 21, 1969. He said he remembers Mr. DeMarco's telling him that the deed was "memorializing" a gift that had already been made.

Mr. Morgan said that no one at the White House gave him specific authority to sign the deed but that Mr. DeMarco told him it was appropriate.

Kalmbach Staff Interview.—In his interview with the staff, Herbert Kalmbach stated that he was present during most, but not all, of the April 21, 1969, meeting with Messrs. Morgan and DeMarco. He does not recall any discussion of a deed, nor does he recall Mr. DeMarco's typing anything. He said he does recall Mr. Morgan's signing something but does not remember what he signed. Mr. Kalmbach said that he remembers no discussion of the President's papers at the meeting and does not believe he even knew of a gift at that time.

Kalmbach California Deposition.—In a sworn statement before the California Secretary of State on February 21, 1974, Mr. Kalmbach has related essentially the same facts given to the Joint Committee staff in his interview.

Ehrlichman Staff Interview.—John Ehrlichman told the staff that he gave Mr. Morgan no specific guidelines on what to sign and that Mr. Morgan was instructed to burden him and the President as little as possible with the details of the President's personal finances. Mr. Ehrlichman said that, as far as he was concerned, Mr. Morgan had the authority to sign the deed even though he received no specific instructions and had no power of attorney. Mr. Ehrlichman says he recalls no discussion of a deed in March or April 1969.

Receipt of 1968 Deed by DeMarco

Mr. DeMarco told the staff that he prepared the deed for the second gift of papers with the aid of the 1968 deed. The two deeds are identical in many respects, the main differences being that the 1969 deed was prepared for Mr. Morgan's signature, not President Nixon's, and did not contain a line for signature by the General Services Administration. It is clear, then, that Mr. DeMarco could not have prepared the 1969 deed until after he received a copy of the 1968 deed.

In his written statement to the staff, Mr. DeMarco said:

"Prior to his [Morgan's] arrival, I received either from Mr. Morgan or from Mr. Kalmbach copies of the 1968 gift documents and the access rights documents which had been used in connection with such a gift."

In their interviews with the staff neither Mr. Morgan nor Mr. Kalmbach recall sending the 1968 deed to Mr. DeMarco in April 1969. The staff has questioned all of the other individuals whom it knows had copies of the 1968 deed before April 1969, including Richard Ritzel, Martin Feinstein, and the people at the National Archives, in an effort to find out if any of them recall sending a copy to Mr. DeMarco or Mr. Kalmbach at that time. The staff has also questioned Mr. Ehrlichman, who may have acted as a conduit in sending the 1968 deed to Mr. DeMarco. The staff has not been able to determine who, if anyone, sent Mr. DeMarco the 1968 deed in April 1969.

Staff Analysis

For purposes of determining the validity of tax deductions, the burden of proof is on the taxpayer, not the Government. The only evidence that Mr. DeMarco prepared and Mr. Morgan signed a deed of gift for the second gift of papers on April 21, 1969, is the statements of Messrs. DeMarco and Morgan to that effect. The staff has received only one written document purporting to relate or even refer to this deed—the draft of the Schedule A that Mr. DeMarco said he prepared on April 21, 1969. The deed itself, if it existed, was, appar-

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Page 86 of the Joint Committee's report indicates that on March 27, 1969, a copy of the 1968 deed was sent by the Archives to Morgan. But Morgan states that as of March 27, 1969 as far as he knew no deed existed for the 1969 gift, although that would not necessarily mean that no such deed existed.

14. Morgan's Authority to Sign the Deed.

Morgan said that he doesn't think that at his meeting with Haldeman or Ehrlichman before he left for California that they or anyone else at any time ever told him that he could sign a deed for the President. Nor did anyone say that he could not sign such a deed. For that matter, no one told him he could sign a right of access for the President. Morgan states that Ehrlichman did sign papers like that and perhaps that is where Morgan learned to do it. On page A304 the document shows that a limited right of access was signed by Morgan on behalf of the President on March 27, 1969. The right of access was insisted upon by the Archives. Morgan also said that he signed various documents for the President, for example, documents relating to organizations from which the President was relinquishing his membership. But Morgan had not previously signed a deed on the President's behalf.

15. Discussions with Krogh

Morgan states that he must have talked about the charitable contribution of the papers with Egil Krogh. However, he said that the White House staff was very closed mouth about their operations and that he remembers no specific discussions. He does recall that the meeting in New York with Ritzel and Krogh was after the delivery of the papers to the Archives.

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DeMarco said that the deed itself was largely based on the deed for the 1968 gift which had been drawn up by Richard Ritzel. He said that he must have received a copy of this from either Morgan or Kalmbach, although he does not remember which. When asked why there were certain changes in the deed, he said that the most important change was not having it countersigned by a GSA representative. He said he did this because for the 1968 gift he viewed the execution of the deed as the operative act of giving. In contrast, for 1969, he thought that the delivery of the papers to the National Archives constituted the act of giving. He said he did not discuss the form of the deed with anyone else.

DeMarco stated that there was some discussion as to whether or not the deed should or should not be signed, but there was never any question that Morgan had authority to sign for the President, since he had handled the sale of the President's New York apartment and was coming out to California to do the President's business. We asked if the acceptance of Morgan's authority was based upon the "regularity of things." "That's a fair statement of my state of mind," replied DeMarco. The deed

Kalmbach Staff Interview.—In his interview with the staff, Herbert Kalmbach stated that he was present during most, but not all, of the April 21, 1969, meeting with Messrs. Morgan and DeMarco. He does not recall any discussion of a deed, nor does he recall Mr. DeMarco's typing anything. He said he does recall Mr. Morgan's signing something but does not remember what he signed. Mr. Kalmbach said that he remembers no discussion of the President's papers at the meeting and does not believe he even knew of a gift at that time.

Kalmbach California Deposition.—In a sworn statement before the California Secretary of State on February 21, 1974, Mr. Kalmbach has related essentially the same facts given to the Joint Committee staff in his interview.

Ehrlichman Staff Interview.—John Ehrlichman told the staff that he gave Mr. Morgan no specific guidelines on what to sign and that Mr. Morgan was instructed to burden him and the President as little as possible with the details of the President's personal finances. Mr. Ehrlichman said that, as far as he was concerned, Mr. Morgan had the authority to sign the deed even though he received no specific instructions and had no power of attorney. Mr. Ehrlichman says he recalls no discussion of a deed in March or April 1969.

Receipt of 1968 Deed by DeMarco

Mr. DeMarco told the staff that he prepared the deed for the second gift of papers with the aid of the 1968 deed. The two deeds are identical in many respects, the main differences being that the 1969 deed was prepared for Mr. Morgan's signature, not President Nixon's, and did not contain a line for signature by the General Services Administration. It is clear, then, that Mr. DeMarco could not have prepared the 1969 deed until after he received a copy of the 1968 deed.

In his written statement to the staff, Mr. DeMarco said:

"Prior to his [Morgan's] arrival, I received either from Mr. Morgan or from Mr. Kalmbach copies of the 1968 gift documents and the access rights documents which had been used in connection with such a gift."

In their interviews with the staff neither Mr. Morgan nor Mr. Kalmbach recall sending the 1968 deed to Mr. DeMarco in April 1969. The staff has questioned all of the other individuals whom it knows had copies of the 1968 deed before April 1969, including Richard Ritzel, Martin Feinstein, and the people at the National Archives, in an effort to find out if any of them recall sending a copy to Mr. DeMarco or Mr. Kalmbach at that time. The staff has also questioned Mr. Ehrlichman, who may have acted as a conduit in sending the 1968 deed to Mr. DeMarco. The staff has not been able to determine who, if anyone, sent Mr. DeMarco the 1968 deed in April 1969.

Staff Analysis

For purposes of determining the validity of tax deductions, the burden of proof is on the taxpayer, not the Government. The only evidence that Mr. DeMarco prepared and Mr. Morgan signed a deed of gift for the second gift of papers on April 21, 1969, is the statements of Messrs. DeMarco and Morgan to that effect. The staff has received only one written document purporting to relate or even refer to this deed—the draft of the Schedule A that Mr. DeMarco said he prepared on April 21, 1969. The deed itself, if it existed, was, appar-

ently, discarded or lost. Furthermore, Herbert Kalmbach, who participated in most of the meeting with Messrs. Morgan and DeMarco, does not recall having heard any discussion of the gift or the deed; and John Ehrlichman, Mr. Morgan's boss, does not recall discussing the deed with him. Finally, the staff has found no evidence to corroborate Mr. DeMarco's statement that he had a copy of the 1968 deed in April 1969.

C. 1969 ARCHIVES CORRESPONDENCE REGARDING A 1969 DEED

The staff has requested that both the White House and the National Archives furnish it with any letters or memoranda written in 1969 that relate to a deed for the second gift for Nixon papers. The staff has received no letters or memos written in 1969 that contain any reference to a 1969 deed. As discussed in Section A above, material written by the White House about the 1968 gift made frequent references to the 1968 deed.

Edward Morgan wrote a memo to Dr. Reed on September 12, 1969 (Exhibit I-48). The memo mentions the papers, but contains no reference to a 1969 deed or to a deeded portion of the papers.

D. PREPARATION AND SIGNING OF THE SECOND DEED OF GIFT, APRIL 1970

DeMarco's Written Statement.—Mr. DeMarco's statement contains the following description of the preparation and signing of the deed of gift:

"On April 7, 1970 I dictated to my secretary the summary schedule for attachment to the tax return. It was at this time, upon examining the summary schedule and examining the Schedule 'A' which I had instructed my secretary to prepare on March 27, 1970, I noticed that the typewriting on these documents and the color and texture of the paper were so substantially different from the type and the paper used on the draft deed prepared in April of 1969, that I instructed her to retype the entire chattel deed on the new typewriter which we had been using since mid-1969. (The ribbon copy of the retyped chattel deed and the draft of The Richard Nixon Foundation Articles of Incorporation, typed in April 1969, are available for comparison as to type and paper and will be submitted to you for examination.) After it had been retyped in its entirety, I caused two xerox copies to be made, and it was my plan to have the new ribbon copy and two xerox copies re-executed by Mr. Morgan when I saw him in Washington.

"On April 8, 1970 I received in the morning mail the final formal written appraisal of Mr. Newman which was date stamped April 8, 1970. I caused several xerox copies of the original appraisal to be made. I then proceeded to the offices of Arthur Blech, showed him the original appraisal and the various xerox copies I had made. We then assembled the final tax return and attached xerox copies of the final formal Newman appraisal and xerox copies of the summary sheet setting forth the basic points of the gift. We then assembled the final tax return for execution.

"On April 9, 1970 I traveled to Washington, D.C. On April 10, 1970 I met with Edward L. Morgan at his office at the Executive

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He also remembers being in Kalmbach's and DeMarco's office. Morgan knew that DeMarco was the President's tax man and that they were adding another tax expert.

Certainly, Morgan says, the gift of the balance of the papers came up. At this point in the conversation, Haldeman's nephew was not there, and Kalmbach was in and out. Morgan remembers talking with them about a memorializing deed but not the affidavit. Morgan also recalls signing the deed, but what specific conversations came up he doesn't remember. He also does not remember sending a copy of the 1968 deed to DeMarco. He also says now that he didn't question his authority to sign the deed.

Morgan recalls no conversation about receipts or a description of the papers. After the meeting Morgan was driven to Los Angeles and he left by plane.

Morgan also has a vague recollection of signing the document again (1970?) but he can't put a time and place together.

13. Morgan's Belief in 1969 Re the Completed Gift.

On March 27, 1969 Morgan now says he believed that all the Nixon papers were owned by the U.S. and had been given to the U.S. He thought that the President could exercise limited control over them, but that a complete gift had been made and that the President had relinquished his right to sell the papers. Morgan says he believed the 1969 gift was OK without a deed.

DeMarco said that the deed itself was largely based on the deed for the 1968 gift which had been drawn up by Richard Ritzel. He said that he must have received a copy of this from either Morgan or Kalmbach, although he does not remember which. When asked why there were certain changes in the deed, he said that the most important change was not having it countersigned by a GSA representative. He said he did this because for the 1968 gift he viewed the execution of the deed as the operative act of giving. In contrast, for 1969, he thought that the delivery of the papers to the National Archives constituted the act of giving. He said he did not discuss the form of the deed with anyone else.

DeMarco stated that there was some discussion as to whether or not the deed should or should not be signed, but there was never any question that Morgan had authority to sign for the President, since he had handled the sale of the President's New York apartment and was coming out to California to do the President's business. We asked if the acceptance of Morgan's authority was based upon the "regularity of things." "That's a fair statement of my state of mind," replied DeMarco. The deed

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itself (of which there was only one copy) was signed in DeMarco's Newport Beach office by Morgan. DeMarco does not remember if any of the other items attached to the deed, i.e., the affirmation of Morgan's authority and the notarization of Morgan's signature by DeMarco, were executed on that day. DeMarco said that he had expected Morgan to bring with him some form of receipts for the papers from the Archives which would more particularly describe them. When he discovered that these were not there, on a typewriter in his Newport Beach office he typed out the original "Schedule A" to the deed, just "to have something." He said that they anticipated getting the records and information from Newman and completing it soon thereafter. He said that the deed executed on April 21, 1969 stayed in his custody at all times.

DeMarco said that he had received guidance on the form of the papers only from the 1968 deed and from the conversations he had had with Morgan. When asked if he had thereafter received instructions from any one except Morgan he said "I don't think I did." DeMarco said that he is not sure that the deed which he had prepared and which was signed by Morgan on April 21, 1969 was in all respects the same as the final version which was given to the National Archives. He said he had no recollection of specific things that he did not like in the first deed, but that he regarded it as not final, and probably would have done it over even if there had been a

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13. Morgan's Belief in 1969 Re the Completed Gift.

On March 27, 1969 Morgan now says he believed that all the Nixon papers were owned by the U.S. and had been given to the U.S. He thought that the President could exercise limited control over them, but that a complete gift had been made and that the President had relinquished his right to sell the papers. Morgan says he believed the 1969 gift was OK without a deed.

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Exhibit I - 12

SCHEDULE "A" TO CHATTEL DEED
DATED MARCH 27, 1969

Private pre-Presidential papers of Richard M. Nixon
of approximate value of \$500,000.00, delivered to
National Archives on March 27, 1969. Detailed Schedule
to be attached hereto upon final, sorting, classification
and appraisal.

leads him to believe that he did not talk to Mr. DeMarco in April but that his first conversation with Mr. DeMarco occurred at the end of October 1969. The letter to which Mr. Newman referred (Exhibit I-11) reads as follows:

31 October 1969

"Dear Mr. DeMarco:

"It was good to have an opportunity to speak with you this morning and I look forward to seeing you in Washington, if you can make it. Otherwise, I am sure we will be having several telephone conversations after my investigations of the archives.

"Under separate cover I am sending you an article that I wrote several years ago about appraisals that you may find of some interest.

"Sincerely yours,

"Ralph G. Newman"

Mr. Newman told the staff that this letter is the type of letter he would write to someone that he had just met and, therefore, concludes that he had not talked or met Mr. DeMarco prior to this first conversation. Mr. Newman believes that his sequence of events is correct; that is, he made a trip to Washington to review the material and then made a quick analysis of the approximate value of the materials in the Archives, but that this did not occur in April, but rather subsequent to the October 31 telephone call. As discussed below, an analysis of the handwritten notes taken by Mr. DeMarco after his phone conversation with Mr. Newman indicates that they are more consistent with a phone call in October than with a call in April.

DeMarco's alleged conversation with Arthur Blech in May 1969

The staff has been told of only one conversation about a bulk gift in early 1969 that both parties now recall, a phone conversation between Arthur Blech and Frank DeMarco in May 1969. Mr. Blech was subsequently hired to prepare President Nixon's tax returns, but at this time he was on retainer by the Kalmbach, DeMarco law firm as a consultant on tax matters. Mr. Blech has told the staff that he was called by Mr. DeMarco around the middle of May 1969 and asked to determine the tax aspects of a gift of \$550,000 by an individual with \$250,000 and also with \$300,000 of adjusted gross income. Mr. Blech said he wrote this down on a piece of paper and returned the call the next day to Mr. DeMarco with his response. Mr. Blech said that when Mr. DeMarco told him on whose behalf he was raising the question, Mr. Blech dated his paper with the notes and kept it. The staff has asked for a copy of these notes, but Mr. Blech has indicated that he has been unable to find these notes and indicates that they were lost during the time Coopers & Lybrand went through all his files during their audit of the President's tax returns. Mr. Blech did show the staff, however, the sheet of paper of his notes of the call by Mr. DeMarco in August or September 1969 when he was hired to keep the President's books and to prepare his tax returns. This sheet of paper lists the items on which he would have to get information but does not list the gift of papers, which Mr. Blech says he thought had been the \$550,000 figure so that he did not need any further information. The staff also raises questions about the fact that Mr. DeMarco

indicated on his Schedule A (Exhibit 'I-12), which he states he prepared on April 21, 1969, an amount of \$500,000 for the gift, while Mr. Blech is positive that Mr. DeMarco told him \$550,000 approximately three weeks later. In his staff interview, Mr. DeMarco said he gave Mr. Blech the \$500,000 figure, not the \$550,000 one.

Both Mr. Blech and Mr. DeMarco stated in their staff interviews that in this May 1969 phone call, Mr. DeMarco told Mr. Blech that President Nixon had already made his bulk gift of papers.

Determination of \$500,000 figure by DeMarco

The staff has tried to determine how the amount of the gift (\$576,000) was derived. Mr. DeMarco told the staff that information on the amount of the President's income was obtained from Martin Feinstein, the accountant at Vincent Andrews, Inc., who handled the President's taxes at that time, and that this information was relayed by Mr. Feinstein to either Mr. Morgan or Mr. Kalmbach and that Mr. Morgan and Mr. DeMarco calculated the approximate size of the gift. In an interview with the staff, Mr. Feinstein has said that no one contacted him in this regard and that he was never aware of the second gift of papers. Mr. Ehrlichman and Mr. Morgan both have no knowledge of the determination of the amount of the gift and neither of them indicated giving any figure to Mr. DeMarco. In his worksheets estimating the President's possible income in 1969 (for purposes of his declaration of estimated tax) Mr. Feinstein listed his possible income at \$490,000 and showed possible charitable contributions on this basis of \$150,000 (30 percent of the \$490,000 rounded upward).

Staff Analysis

In their defense of President Nixon's deduction for his second gift of papers, the President's counsel have relied heavily on the assertion that early in 1969 the President intended to make a large gift of his papers. The staff acknowledges that at this time the President intended to make a gift sometime in 1969. The issue then is whether there was an intent to make a gift in early 1969 and whether the gift intended sometime in 1969 was to be a bulk gift, one large enough to use up the maximum charitable contribution deduction for several years, or like the gifts of President Johnson and like President-elect Nixon's 1968 gift, a gift large enough to use up only one year's available deductions.

The staff has seen no written evidence to indicate that in early 1969 the President intended to make a gift before July 25, 1969, nor has it seen any written evidence to indicate that the gift the President planned to make sometime in 1969 was to be a bulk gift. The evidence for these assertions by President Nixon's counsel consists entirely of reported conversations about the President's gift. Their memorandum asserts that in February 1969, President Nixon told John Ehrlichman to make a bulk gift and that Mr. Ehrlichman told Edward Morgan to make the gift on behalf of the President. However, in his interview with the staff, Mr. Ehrlichman did not mention this alleged conversation with the President, nor did Mr. Morgan in his staff interview recall any conversation with Mr. Ehrlichman about executing President Nixon's intent to make a bulk gift rather than a one-year gift.

The lawyer who prepared President Nixon's tax return in 1969, Frank DeMarco, has told the staff of several discussions of the gift in

completed Schedule A at that time. In addition, he said that he had had no contact with Richard Ritzel on the gift of papers or on the reflection of gift of papers in a tax return. (although he did talk to Ritzel in early 1970 about the details of the Mudge Rose buyout arrangements).

When asked what he thought the significance of the 1969 deed was, Demarco said first of all, that he still did not regard the deed as necessary to complete the gift; the delivery was enough. Nevertheless, he thought that its significance lay in the fact that it established and limited access to the papers, and that it coordinated and identified the boxes of the President's papers with the boxes which had been numbered by the Archives. The latter point, he said, had been made to him by Newman.

3. Conversation with Blech in May, 1969.

DeMarco met with Morgan at the White House on May 5, 1969. Soon after his return to Los Angeles on May 12, he called Arthur Blech, who did accounting work for many of his firm's clients, and posed the following question: "A client of ours has made a gift worth \$500,000; he has an income of between \$250,000 and \$300,000 a year. For how many years is this gift good?" DeMarco said that he must have received the figure of \$500,000 from Morgan, in the context of Morgan's comparing the size of the 1968 gift to

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the papers which were delivered to the Archives for the 1969 gift.

After giving DeMarco his rough answers on this question, Blech asked, "Who makes a gift like this?" DeMarco answered, "The President." Blech replied, "Is that wise?" "It's been done already," DeMarco said. While the substance of this conversation is agreed on by both DeMarco and Blech, Blech told us that DeMarco posed the question at the end of one working day, and that Blech called back with the answers at the beginning of the next day, and posed questions as to who the donor was. We asked DeMarco why it was important to know the answer to his question to Blech. He replied, "I don't know. Tax-planning wise, I just wanted to know."

4. Summer, 1969.

DeMarco said that during the summer of 1969, most of his time was spent on putting together the San Clemente deal. He said that while the sellers wanted to sell the property in an "as is" condition, the President wanted only the homesite, not the extra acreage. DeMarco said that Ehrlichman stated in a press release of May 12, 1969, that the President wanted to retain just the homesite, and that the other land would be acquired by a "compatible purchaser." DeMarco said that in conformity to this

He said that in August or September of 1969 he was contacted by Frank DeMarco and asked if he would do work on the President's taxes and set up a financial record-keeping system for the President. He said that the real work in this record-keeping system did not begin until January 1970, by which time he and DeMarco had received the President's old records from the New York accounting firm of Vincent Andrews, Inc. At that time, he and DeMarco reconstructed the President's financial records back to January 1, 1969. Blech continues to do this work for the President.

The Gift of Papers Deduction.

Blech said that between May 1 and May 15, 1969 he received a telephone call from DeMarco, in which DeMarco asked him a question on a charitable contribution carry-over. DeMarco said that a taxpayer with an income of between \$250,000 and \$300,000 had given a gift valued at between \$500,000 and \$550,000. He asked Blech about the availability of the carry-over of this charitable contribution for the following years, and asked Blech to work out a table of how long it would take to "eat up" the deduction for this contribution. Blech said that this phone call came towards the end of a working day and that he told DeMarco that he would call him back in the morning with an answer. The following day he called DeMarco back and gave him the figures on his calculation. Blech asked DeMarco, "Who would make such a contribution?" DeMarco replied that the gift would be made in papers, not in cash. Blech then asked who had such

papers to give and DeMarco answered "The President." Blech said that he told DeMarco that in his opinion it was "not politically wise to make such a gift." But DeMarco said, according to Blech, "it is no use speculating on the subject because the gift has already been made."

Blech told us that when he discovered about whom the question was being posed, he dated and kept the scrap of paper on which he had made his calculations. He said that he last saw this paper in the summer of 1973 when Coopers & Lybrand were making their audit of the President's finances. He stated that since that time he has not been able to find his original note.

In August or September of 1969 he noted on a sheet of paper a number of questions involving the President's personal finances. He said that he did not mention the gift of papers on that sheet because he assumed that the gift had already been made. He told us, however, that the sheet contains calculations on the 30% carry-over, which would be available for the charitable contribution of the papers. Although this paper was not dated, he assured us that it was made during August or September of 1969. He said that he did not now have a copy of that paper and that it had been turned over to the Joint Committee on Internal Revenue Taxation.

Blech said that he started preparing the President's tax returns for 1969 in March, 1970. Blech said that he had drafted the complete

Subject. PRESIDENT NIXON'S TAX PROPOSALS
(TREASURY DEPARTMENT OFFICIALS)

TAX REFORM, 1969

TUESDAY, APRIL 22, 1969

HOUSE OF REPRESENTATIVES,
COMMITTEE ON WAYS AND MEANS,
Washington, D.C.

The committee met at 10 a.m., pursuant to notice, in the committee room, Longworth House Office Building, Hon. Wilbur D. Mills (chairman of the committee) presiding.

The CHAIRMAN. The committee will please be in order.

Today we will receive testimony from the Treasury Department with respect to the proposals recommended by President Nixon in his message to Congress yesterday.

Without objection, we will place in the record at this point a copy of the President's message and other materials submitted by the Treasury Department to the committee with respect to the President's proposal.

(The documents referred to follows:)

TAX REFORM LEGISLATION

To the Congress of the United States:

Reform of our Federal income tax system is long overdue. Special preferences in the law permit far too many Americans to pay less than their fair share of taxes. Too many other Americans bear too much of the tax burden.

This Administration, working with the Congress, is determined to bring equity to the Federal tax system. Our goal is to take important first steps in tax reform legislation during this session of the Congress.

The economic overheating which has brought inflation into its fourth year keeps us from moving immediately to reduce Federal tax revenues at this time. Inflation is itself a tax—a cruel and unjust tax that hits hardest those who can least afford it. In order to “repeal” the tax of inflation, we are cutting budget spending and have requested an extension of the income tax surcharge.

Although we must maintain total Federal revenues, there is no reason why we cannot lighten the burden on those who pay too much, and increase the taxes of those who pay too little. Treasury officials will present the Administration's initial group of tax reform proposals to the Congress this week. Additional recommendations will be made later in this session. The overall program will be equitable and essentially neutral in its revenue impact. There will be no substantial gain or loss in Federal revenue, but the American taxpayer who carries more than his share of the burden will gain some relief.

Much concern has been expressed because some citizens with incomes of more than \$200,000 pay no Federal income taxes. These people are neither tax dodgers nor tax cheats. Many of them pay no taxes because they make large donations to worthy causes, donations which every taxpayer is authorized by existing law to deduct from his income in figuring his tax bill.

But where we can prevent it by law, we must not permit our wealthiest citizens to be 100% successful at tax avoidance. Nor should the Government limit its tax reform only to apply to these relatively few extreme cases. Preferences built into the law in the past—some of which have either outlived their usefulness or were never appropriate—permit many thousands of individuals and corporate taxpayers to avoid their fair share of Federal taxation.

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A number of present tax preferences will be scaled down in the Administration's proposals to be submitted this week. Utilizing the revenue gained from our present proposals, we suggest tax reductions for lower-income taxpayers. Further study will be necessary before we can propose changes in other preferences; and as these are developed we will recommend them to the Congress.

Specifically, the Administration will recommend:

—*Enactment of what is in effect a "minimum income tax" for citizens with substantial incomes by setting a 50% limitation on the use of the principal tax preferences which are subject to change by law.*

This limit on tax preferences would be a major step toward assuring that all Americans bear their fair share of the Federal tax burden.

—*Enactment of a "low income allowance," which will remove more than 2,000,000 of our low income families from the Federal tax rolls and assure that persons or families in poverty pay no Federal income taxes.*

This provision will also benefit students and other young people.

For example, the person who works in the summer or throughout the year and earns \$1,700 in taxable income—and now pays \$117 in Federal income taxes—would pay nothing.

The married couple—college students or otherwise—with an income of \$2,300 and current taxes of \$100 would pay nothing. A family of four would pay no tax on income below \$3,500—the cut-off now is \$3,000.

The "low income allowance," if enacted by the Congress, will offer genuine tax relief to the young, the elderly, the disadvantaged and the handicapped.

Our tax reform proposals would also help workers who change jobs by liberalizing deductions for moving expenses and would reduce specific preferences in a number of areas:

—taxpayers who have certain nontaxable income or other preferences would have their non-business deductions reduced proportionately.

—certain mineral transactions (so-called "carved out" mineral production payments and "ABC" transactions would be treated in a way that would stop artificial creation of net operating losses in these industries.

—exempt organizations, including private foundations, would come under much stricter surveillance.

—The rules affecting charitable deductions would be tightened—but only to screen out the unreasonable and not stop those which help legitimate charities and therefore the nation.

—the practice of using multiple subsidiaries and affiliated corporations to take undue advantage of the lower tax rate on the first \$25,000 of corporate income would be curbed.

—farm losses, to be included in the "limitation on tax preferences," would be subject to certain other restrictions in order to curb abuses in this area.

I also recommend that the Congress repeal the 7% investment tax credit, effective today.

This subsidy to business investment no longer has priority over other pressing national needs.

In the early 60's, America's productive capacity needed prompt modernization to enable it to compete with industry abroad. Accordingly, Government gave high priority to providing tax incentives for this modernization.

Since that time, American business has invested close to \$400 billion in new plant and equipment, bringing the American economy to new levels of productivity and efficiency. While a vigorous pace of capital formation will certainly continue to be needed, national priorities now require that we give attention to the need for general tax relief.

Repeal of the investment tax credit will permit relief to every taxpayer through relaxation of the surcharge earlier than I had contemplated.

The revenue effect of the repeal of the investment tax credit will begin to be significant during calendar year 1970. Therefore, I recommend that investment tax credit repeal be accompanied by extension of the full surcharge only to Janu-

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ary 1, 1970, with a reduction to 5% on January 1. This is a reappraisal of my earlier recommendation for continuance of the surcharge until June 30, 1970 at a 10% rate. If economic and fiscal conditions permit, we can look forward to elimination of the remaining surtax on June 30, 1970.

I am convinced, however, that reduction of the surtax without repeal of the investment tax credit would be imprudent.

The gradual increase in Federal revenues resulting from repeal of the investment tax credit and the growth of the economy will also facilitate a start during fiscal 1971 in funding two high-priority programs to which this Administration is committed:

—Revenue sharing with State and local governments.

—Tax credits to encourage investment in poverty areas and hiring and training of the hard-core unemployed.

These proposals, now in preparation, will be transmitted to the Congress in the near future.

The tax reform measures outlined earlier in this message will be recommended to the House Ways and Means Committee by Treasury officials this week. This is a broad and necessary program for tax reform. I urge its prompt enactment.

But these measures, sweeping as they are, will not by themselves transform the U.S. tax system into one adequate to the long-range future. Much of the current tax system was devised in depression and shaped further in war. Fairness calls for tax reform now; beyond that, the American people need and deserve a simplified Federal tax system, and one that is attuned to the 1970's.

We must reform our tax structure to make it more equitable and efficient; we must redirect our tax policy to make it more conducive to stable economic growth and responsive to urgent social needs.

That is a large order. Therefore, I am directing the Secretary of the Treasury to thoroughly review the entire Federal tax system and present to me recommendations for basic changes, along with a full analysis of the impact of those changes, no later than November 30, 1969.

Since taxation affects so many wallets and pocketbooks, reform proposals are bound to be controversial. In the debate to come on reform and in the even greater debate on redirection, the nation would best be served by an avoidance of stereotyped reactions. One man's "loophole" is another man's "incentive." Tax policy should not seek to "soak" any group or give a "break" to any other—it should aim to serve the nation as a whole.

Tax dollars the Government deliberately waives should be viewed as a form of expenditure, and weighed against the priority of other expenditures. When the preference device provides more social benefit than Government collection and spending, that "incentive" should be expanded; when the preference is inefficient or subject to abuse, it should be ended.

Taxes, often bewailed as inevitable as death, actually give life to the people's purpose in having a Government: to provide protection, service and stimulus to progress.

We shall never make taxation popular, but we can make taxation fair.

RICHARD NIXON.

THE WHITE HOUSE, April 21, 1969.

Congress of the United States
JOINT COMMITTEE ON INTERNAL REVENUE TAXATION
Washington, D.C. 20515

MEMORANDUM

To: Dr. Laurence N. Woodworth

From: Paul Oosterhuis

Subject: The 1969 Legislative History of the Provision
Repealing the Deduction for Gifts of Collections
of Papers

The following is a beginning chronology of congressional action on the repeal of the deduction for collections of papers. The history was reconstructed from Ways and Means press releases and our copies of Committee pamphlets and prints. Probably you and others who participated in the 1969 proceedings can fill in many of the missing details from your own recollections. Also, I am sure that I could discover more details by examining our old files from 1969, if you think that would be helpful.

February 18: Ways and Means Committee announces a schedule of hearings on tax reform, and lists in detail various topics to be discussed. No mention is made of the present tax treatment of contributions of papers.

April 21 and 22: Administration announces (April 21) and introduces before the Ways and Means Committee (April 22) its proposals for tax reform. These proposals include a provision which would reduce the amount of property contributions by the amount of any appreciation which would be taxed as ordinary income upon sale of the property. However, the Administration did not propose to treat the increase in value of collections of papers as ordinary income.

May 7: Staff pamphlet on charitable contributions presented to the Ways and Means Committee. The pamphlet does not specifically mention the treatment of donations of papers. Instead, the pamphlet

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suggests two general approaches to contributions of appreciated property: a broad approach which would permit the taxpayer either to recognize any gain or to limit the amount of the contribution to the basis of the property; a narrow approach, which would apply the above rules only to private foundations, to ordinary income property (examples of such property given in the pamphlet are section 306 stock and inventory), and to works of art (the example given in the pamphlet is paintings).

May 27: Ways and Means press release announces first tentative Committee decisions. The release states that the Committee is still undecided between the broad and narrow approaches regarding appreciated property contributions. However, the press release states that under the narrow approach, gifts of paper collections and other tangible personal property would be taxed in a manner similar to works of art and other ordinary income property. The press release makes no mention of any proposed effective date for this provision.

July 9: Staff pamphlet on capital gains is presented to Ways and Means. The pamphlet suggests an amendment to the definition of capital assets to exclude collections of papers.

July 25: Ways and Means press release announces third set of tentative decisions. This release states that the Committee has decided to adopt the narrower approach regarding the taxation of contributions of appreciated property, and that all gifts of works of art, collections of papers, and other forms of tangible personal property are included in the proposal. The press release also announces the Committee decision to exclude collections of papers from the definition of capital assets. No mention in either proposal was made of an effective date for those provisions.

August 2 and 4: Parts I and II of the Ways and Means Committee Reports are released on these days. Part I describes the change in treatment of contributions of appreciated property (including collections of papers) and sets an effective date for that provision of December 31, 1969. Part II describes the change in

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the definition of capital asset, which excludes collections of papers, and gives an effective date for that provision of July 25, 1969.

November 21: Senate Committee Report is printed. The bill as reported establishes an effective date for the change in taxation of appreciated property contributions generally as December 31, 1969, but establishes an effective date for the changed treatment of contributions of collections of papers of December 31, 1968. The bill as reported also changes the definition of a capital asset, and establishes an effective date of December 31, 1969, for that provision.

December 21: The Conference Report is ordered to be printed. The bill as reported from Conference establishes a July 25, 1969, effective date for contributions of papers, although other contributions of appreciated property would not be affected until December 31, 1969. The bill as reported by Conference also changes the definition of capital assets and applies the changes to sales and dispositions made after July 25, 1969.

PO/mw : 12/28/73

(3) Appreciated Property. The Committee has not yet fully decided between two alternative approaches with respect to the tax treatment of charitable contributions of appreciated property. One approach would apply to all charitable contributions of appreciated property. Under this approach taxpayers at their option would either reduce the charitable contribution claimed to the amount of their cost or other basis in the property, or, if they wished to claim a deduction based on fair market value of the property, would include in income the untaxed appreciation with respect to the property involved. A transitional rule would be provided with respect to this approach. The second approach would apply the above-described rules to the following types of charitable contributions of appreciated property.

(a) All such charitable contributions to private foundations other than private operating foundations. An exception to this would apply for gifts of appreciated property to a private foundation where it within one year spends the amount for charitable purposes.

(b) All gifts of property without regard to the type of charitable organizations if the property (had it been sold) would have resulted in either ordinary income or short term capital gain.

(c) All gifts of works of art, collections of papers, and other forms of tangible personal property.

(d) In the case of so-called bargain sales--where a taxpayer sells property to a charitable organization for less than its fair market value (usually its cost to him)--the cost of the property is to be allocated between the portion of the property "sold" and the portion of the property "given" to the charity on the basis of the fair market value of each.

(4) Repeal of Charitable Trust Rule. The Committee tentatively decided to repeal the two-year charitable trust rule which allows an individual to exclude from his income the income of a trust established by him to pay the income to a charity for a period of at least two years.

(5) Limitation on Deduction Allowed Non-Exempt Trusts. The Committee tentatively decided to limit the deduction allowed nonexempt trusts for amounts set aside for charity to the present value of the gift to charity.

(6) Disallowance of Deduction for Right to Use of Property. The Committee tentatively decided to disallow charitable deductions for contributions to a charity of the right to use property.

(7) Split-Interest Trusts. The Committee tentatively decided in the case of split-interest trusts (a trust under which the income is paid to private persons and the remainder to charity, or vice versa) to adopt a provision under which the charitable contribution deduction would be recaptured in whole or in part where the investment policies of the trust--as between the income and the remainder beneficiaries--are not consistent with the assumptions on which the deduction was originally computed, and also to adopt a provision disallowing a charitable contribution deduction for a gift to charity in the form of an income interest in a trust where the remainder is to go to a noncharitable beneficiary.

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F. REAL ESTATE DEPRECIATION

The Committee tentatively reached the following decisions in the case of real estate depreciation

(1) For new residential housing (not including transient housing) it was tentatively decided to continue to permit the use of the presently allowed double declining balance method of computing depreciation (or alternatively the sum-of-the-years digits method).

(2) For other new real estate, effective with respect to construction begun or real estate acquired after July 24, it was tentatively decided to limit the maximum rate of depreciation which may be taken to 150 percent declining balance depreciation. The faster methods, however, will be available in those cases where there was a binding contract on, or before, that date to build or acquire the property after that date.

(3) In the case of old buildings acquired after July 24, it was tentatively decided that (unless there was a binding purchase contract in effect on or before that time) straight line depreciation is to be the only depreciation method available for such property.

(4) In the case of capital expenditures made for the rehabilitation of old properties, it was tentatively decided that the capital expenditures could be amortizable over a five year period.

(5) In the case of any real estate depreciation occurring in the future, it was tentatively decided that, to the extent the depreciation is in excess of straight line depreciation, this excess depreciation over straight line is to be recaptured as ordinary income, to the extent of the capital gain occurring upon the sale of the property. This is the same as the recapture rule under present law, except for the deletion of the provision for a percentage reduction in the recapture to the extent that the sale occurs after property has been held for more than 20 months.

(6) In the case of a corporation, it was tentatively decided that depreciation for purposes of determining the earnings and profits of the corporation is to be computed on the straight line basis. (The presence or absence of earnings and profits determines whether a distribution to a shareholder is treated as taxable income or a return of capital).

G. CHARITABLE CONTRIBUTIONS OF APPRECIATED PROPERTY

The Committee tentatively decided to adopt the second approach described in its press release of May 27, 1969, with respect to the tax treatment of charitable contributions of appreciated property. Under this approach, taxpayers at their option would either (1) reduce the charitable deduction claimed for a charitable contribution of appreciated property to the amount of their cost or other basis in the property, or, (2) if they wish to claim a deduction based on the fair market value of the property, they would include in income the untaxed appreciation with respect to the property involved. This rule, however, under the tentative decision would apply only to the following types of charitable contributions of appreciated property.

(a) All such charitable contributions to private foundations other than private operating foundations. An exception to this would apply for gifts of appreciated property to a private foundation where it within one year spends the amount for charitable purposes.

(b) All gifts of property without regard to the type of charitable organization, if the property (had it been sold) would have resulted in either ordinary income or short term capital gain.

(c) All gifts of works of art, collections of papers, and other of tangible personal property.

TAX REFORM ACT OF 1969

P.L. 91-172, see page 509

[House Report (Ways and Means Committee) No. 91-413,
August 2, 1969 [To accompany H.R. 13270]

Senate Report (Finance Committee) No. 91-552,
November 21, 1969 [To accompany H.R. 13270]

Conference Report No. 91-782,
December 22, 1969 [To accompany H.R. 13270]

Cong. Record Vol. 115 (1969)

DATES OF CONSIDERATION AND PASSAGE

[House August 7, December 22, 1969
Senate December 11, 22, 1969

The House Report, the Senate Report, and the Conference
Report are set out.

HOUSE REPORT NO. 91-413

The Committee on Ways and Means, to whom was referred the bill (H.R. 13270), to reform the income tax laws, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

I. SUMMARY

The Tax Reform Act of 1969 (H.R. 13270) represents a substantive and comprehensive reform of the income tax laws. Your committee is not aware of any prior tax reform bill of equal substantive scope.

From time to time, since the enactment of the present income tax, over 50 years ago, various tax incentives or preferences have been added to the internal revenue laws. Increasingly, in recent years taxpayers with substantial incomes have found ways of gaining tax advantages from provisions placed in the code primarily to aid some limited segment of the economy. In fact, in many cases they have found ways to pile one advantage on top of another. Your committee believes that this is an intolerable situation. It should not have been possible for 154 individuals with adjusted gross incomes of \$200,000 or more to pay no income tax. Ours is primarily a self-assessment system. If taxpayers are generally to pay their taxes on a voluntary basis they must feel that these taxes are fair. Moreover, only by sharing the tax burden on a fair basis is it possible to keep the tax burden at a level which is tolerable for all taxpayers.

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transaction and the gift part of the transaction. If this were done, the taxpayer would be required to pay tax on the portion of the gain attributable to the sale part of the transaction.

The tax saving available in the case of a bargain sale of property to a charity may be illustrated by the example of a taxpayer in the 70-percent tax bracket who makes a sale of inventory with a value of \$200 to a charity at its cost of \$100. The taxpayer in this case would save \$140 in taxes with respect to his \$100 charitable gift (70 percent of the \$100 gain if sold, or \$70, plus 70 percent of the \$100 of appreciation taken as a charitable deduction, or \$70).

Your committee does not believe the charitable contributions deduction was intended to provide greater—or even nearly as great—tax benefits in the case of gifts of property than would be realized if the property were sold and the proceeds were retained by the taxpayer. In cases where the tax saving is so large, it is not clear how much charitable motivation actually remains. It appears that the Government, in fact, is almost the sole contributor to the charity. Moreover, an unwarranted benefit is allowed these taxpayers, who usually are in the very high income brackets. Your committee, therefore, considers it appropriate to narrow the application of the tax advantages in the case of gifts of certain appreciated property.

Explanation of provisions.—In order to remove some of the present tax advantages of gifts of appreciated property over gifts of cash, the bill provides that taxpayers making contributions of appreciated property are to be required, at their option, either (A) to reduce their charitable contribution deduction to the amount of their cost or other basis in the property or (B) to take a charitable deduction based on the fair market value of the property but to include in their tax base the untaxed appreciation with respect to the property involved. The charitable donee's basis for the property would be the taxpayer's adjusted basis (for purposes of determining gain increased by the amount of gain recognized by the taxpayer in the contribution. This treatment, however, is to apply only to the following types of charitable contributions of appreciated property.

(i) **Private foundation recipient.**—The above treatment is to apply to all gifts of appreciated property to private foundations, other than private operating foundations. A private operating foundation is an organization described in section 4942(j) (3) of the code substantially more than half of the assets of which are devoted directly to, and substantially all of its income is expended directly for, the active conduct of the activities constituting the purpose or function for which it is organized and operated. Gifts of appreciated property to a private foundation are not to be subject to the treatment provided by the bill where it, within 1 year after its taxable year in which the contribution is received, distributes an amount equal to all such contributions to or for the use of charitable organizations qualifying for the 50-percent charitable contribution deduction or private operating foundations.

(ii) **Ordinary income property.**—The treatment provided by the bill is to apply to all gifts of property without regard to the type of charitable

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recipient, if any portion of the gain on the property (had it been sold) would have resulted in either ordinary income or short-term capital gain. Gifts of inventory, section 306 (stock acquired in a nontaxable transaction, which is in part a dividend and is taxed as such when it is sold), and stock rights (held for a period of less than that required to qualify for a long-term capital gain) are examples of ordinary income or short-term capital gains property which would be covered by this provision. The provision also is to apply to property where any part of the gain on the property (if sold) would be subject to recapture as ordinary income, that is, depreciable property to which the recapture rules apply. As discussed above, these are the cases where the greatest tax benefit is available from gifts of appreciated property, and where the taxpayer actually may be better off by making the charitable contribution than by retaining the property.

(iii) **Tangible personal property.**—All charitable gifts of works of art, collections of papers, and other forms of tangible personal property are to be subject to the treatment provided by the bill, regardless of the type of charitable organization receiving the gift. A fixture which is intended to be severed from real property is to be treated for this purpose as tangible personal property. Works of art, such as paintings, are one of the types of items which frequently are given to charities, and in which there often is a substantial amount of appreciation. The large amount of appreciation in many cases arises from the fact that the work of art is a product of the donor's own efforts (as are collections of papers in many cases). Works of art are very difficult to value and it appears likely that in some cases they may have been overvalued for purposes of determining the charitable contribution deduction.

(iv) **Future interest in property.**—The treatment provided by the bill also is to apply to all charitable gifts of a future interest in property, regardless of the type of charitable organization which receives the gift.

(v) **Bargain sales.**—In the case of so-called bargain sales to charities—where a taxpayer sells property to a charitable organization for less than its fair market value (often at its cost to the taxpayer)—the bill provides that the cost or basis of the property is to be allocated between the portion of the property “sold” and the portion of the property “given” to the charity on the basis of the fair market value of each portion. For example, if a taxpayer sold land with a fair market value of \$20,000 to a charitable organization (which was not a private foundation) at his cost of \$12,000, he would be required to allocate 60 percent of the cost (\$7,200) to the portion “sold” to the charity (\$12,000) and 40 percent of the cost (\$4,800) to the portion “given” to the charity (\$8,000). Thus, this taxpayer would be required to include \$4,800 as gain from a sale of a capital asset in his tax return, and as under present law would be allowed a charitable contributions deduction of \$8,000.

Effective dates.—The amendments made by this provision relating to gifts of certain appreciated property are to apply with respect to contributions paid (or treated as paid under section 170(a) (2) after Decem-

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ber 31, 1969. The amendments made by this provision with respect to bargain sales to a charitable organization are to apply to sales made after May 26, 1969.

4. Repeal of 2-year charitable trust rule (sec. 201(g) of the bill and sec. 673(b) of the code)

Present law.—Under present law, an individual may establish a trust to pay the income from his property, which he transfers to the trust, to a charity for a period of at least 2 years, after which the property is to be returned to him. Although the individual does not receive a charitable contributions deduction in such a case, the income from the trust property is not taxed to the individual. This 2-year charitable trust rule is an exception to the general rule that the income of a trust is taxable to a person who establishes the trust where he has a reversionary interest in the trust which will or may be expected to take effect within 10 years.

General reasons for change.—The effect of the special 2-year charitable trust rule is to permit charitable contributions deductions in excess of the generally applicable percentage limitations of such deductions. For example, with a 30-percent limitation, the maximum deductible contribution that could generally be made each year by an individual who had \$100,000 of dividend income (but no other income) would be \$30,000. However, if the individual transferred 60 percent of his stock to a trust with directions to pay the annual income (\$60,000) to charity for 2 years and then return the property to him, the taxpayer excludes the \$60,000 from his own income each year. In effect, the individual has received a charitable contribution deduction equal to 60 percent of his income.

Your committee does not believe that taxpayers should be allowed to avoid the limitations on the charitable contribution deduction by means of a 2-year charitable trust.

Explanation of provision.—In order to eliminate the above-described means of avoiding the generally applicable percentage limitations on the charitable contribution deduction, your committee's bill would repeal the 2-year trust provision of section 673(b) of the Code. Accordingly, an individual no longer is to be able to exclude the income from property placed in a trust (to pay the income to a charity for a period of at least 2 years) from his income. As a result, a person who establishes a trust will be taxable on its income, whether or not the income beneficiary is a charity, where the individual has a reversionary interest which will or may be expected to take effect within 10 years from the time the income-producing property is transferred to the trust.

Effective date.—This provision is to apply with respect to transfers in trust made after April 22, 1969.

5. Charitable contributions by estates and trusts (sec. 201(f) of the bill and sec. 642(c) of the code)

Present law.—Under present law, a nonexempt trust (or estate) is allowed a full deduction for any amount of its gross income which it pays

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Effective date.—The amendments made by this provision are to be applicable with respect to taxable years beginning after July 25, 1969.

Revenue effect.—It is estimated that this provision will result in an annual revenue increase of \$50 million in 1970, \$60 million in 1974, and \$65 million in 1979.

3. Letters, memorandums, and so forth (sec. 513 of the bill and sec. 1221(3) of the code)

Present law.—Under present law, copyrights and literary, musical or artistic compositions (or similar property) are not treated as capital assets if they are held by the person whose personal efforts created the property (or by a person who acquired the property as a gift from the person who created it). Thus, any gain arising from the sale of such a book, artistic work or similar property is treated as ordinary income, rather than as a capital gain. Collections of papers and letters prepared and collected by an individual (including papers prepared for the individual), however, are treated as capital assets. Therefore, a gain from the sale of papers of this nature is treated as a capital gain, rather than as ordinary income.

General reasons for change.—The rationale underlying the treatment provided in present law for copyrights, artistic works, and similar property in the hands of the person who created them (or in the possession of a person who received the property as a gift from the person who created it) is that the person is, in effect, engaged in the business of creating and selling the artistic work or similar property. It is therefore considered appropriate to treat the income arising from the sale of such property as ordinary income derived in the "ordinary course of his trade or business," rather than as a gain from the sale of a capital asset.

Your committee believes that collections of papers and letters are essentially similar to a literary or artistic composition which is created by the personal effort of the taxpayer and should be classified for purposes of the tax law in the same manner. In the one case, a person who writes a book and then sells it is treated as receiving ordinary income on the sale of the product of his personal efforts (i. e., compensation for personal services rendered). On the other hand, one who sells a paper or memorandum written by or for him is treated as receiving capital gain on the sale, even though the product he is selling is, in effect, the result of his personal efforts.

Explanation of provision.—Your committee's bill provides that letters, memorandums, and similar property (or collections thereof) are not to be treated as capital assets, if they are held by a taxpayer whose personal efforts created the property or for whom the property was prepared or produced (or by a person who received the property as a gift from such a taxpayer). For this purpose, letters and memorandums addressed to an individual are considered as prepared for him. Gains from the sale of these letters and memorandums, accordingly, are to be taxed as ordinary income, rather than as capital gains.

TAX REFORM ACT OF 1969

House Report

Effective date.—The amendments made by this provision are to be applicable with respect to sales and other dispositions occurring after July 25, 1969.

4. Holding period of capital assets (sec. 514 of the bill and sec. 1222 of the code)

Present law.—Capital gains on assets held longer than 6 months are considered long-term gains. In the case of individual taxpayers, 50 percent of the excess of net long-term capital gains over net short-term capital losses are included in income. In the case of corporations, the excess is taxed at a rate of 25 percent, rather than at the regular 48 percent corporate rate. Gains realized on the sale or exchange of capital assets held for not more than 6 months are considered as short-term capital gains, and generally they are fully taxable as ordinary income.

General reasons for change.—A holding period is an objective procedure for distinguishing between short-term and long-term capital gains. The holding period is an arbitrary and imperfect procedure that may be inaccurate in some specific situations, but it provides an approach under which there are significantly fewer administrative and compliance difficulties than would arise under a less objective standard. A holding period has been used for this purpose since 1934, although its length has been changed at various times.

A distinction is made between short-term and long-term capital gains with respect to two major considerations. In both respects, careful examination of the function of the distinction has led your committee to the conclusion that the 6-month holding period is inappropriately short.

First, the special capital gains treatment is provided for long-term gains in recognition of the fact the gain on the sale of an asset which is attributable to the appreciation in value of the asset over a long period of time otherwise would be taxed in one year and at progressive rates in the case of an individual.

In examining this subject, however, your committee reached the conclusion that a 6-month holding period for a long-term gain is inconsistent with the concept of special treatment for assets held over a long period of time. The income averaging concept implied in this special treatment does not support a holding period of less than 1 full year. In addition, long-term capital gains are to be eligible for averaging under a generally applicable income averaging system that provides for a 5-year base period (sec. 311 of your committee's bill), and it would be inconsistent to provide additional tax benefits to gains held for less than a full year.

Second, the 6-month holding period does not properly carry out the intent of Congress to provide special tax treatment for investment gains as distinguished from speculative gains. The underlying concept is that a person who holds an investment for only a short time is primarily interested in obtaining quick gains from short-term market fluctuations which is a distinctively speculative activity. In contrast, the person who holds an investment for a long time probably is interested fundamentally in the

91st CONGRESS
1st Session

H. R. 13270

IN THE SENATE OF THE UNITED STATES

AUGUST 8, 1969

Read twice and referred to the Committee on Finance

AN ACT

To reform the income tax laws.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled.*

3 **SECTION 1. SHORT TITLE, ETC.**

4 (a) **SHORT TITLE.**—This Act may be cited as the “Tax
5 Reform Act of 1969”.

6 (b) **TABLE OF CONTENTS.**—

TITLE I TAX EXEMPT ORGANIZATIONS

SUBTITLE A—PRIVATE FOUNDATIONS

Sec. 101. Private foundations.

SUBTITLE B—OTHER TAX EXEMPT ORGANIZATIONS

Sec. 121. Tax on unrelated business income.

11

20 (c) CHARITABLE CONTRIBUTIONS OF APPRECIATED
21 PROPERTY.—

22 (1) IN GENERAL.—Section 170 (c) (relating to
23 special rule for charitable contributions of certain prop-
24 erty) is amended to read as follows:

25 “(c) CONTRIBUTIONS OF APPRECIATED PROPERTY.—

“(1) GENERAL RULE.—In the case of a charitable contribution of property to which paragraph (2) applies or a charitable contribution of any property directly or indirectly to or for the use of an organization to which paragraph (3) applies, if (at the time of the contribution) the fair market value of the property exceeds the taxpayer's adjusted basis (for purposes of determining gain) in the property, the taxpayer shall elect (at such time and in such manner as the Secretary or his delegate by regulations prescribes) to treat either:

“(A) the fair market value of the property, or

“(B) such adjusted basis of the property,

as the amount of the charitable contribution to be taken into account under subsection (a).

“(2) CERTAIN APPRECIATED PROPERTY.—Paragraph (1) shall apply to charitable contributions of—

“(A) property any portion of the gain on which, if the property were sold for its fair market value at the time of the contribution, would have constituted or been treated as a gain other than a gain from the sale or exchange of a capital asset held for more than 12 months,

“(B) tangible personal property, and

“(C) a future interest in property.

1 For purposes of the preceding sentence, a fixture which
2 is intended to be severed from real property shall be
3 treated as tangible personal property.

4 “(3) CERTAIN ORGANIZATIONS.—Paragraph (1)
5 shall apply to charitable contributions to a private founda-
6 tion (as defined in section 509 (a)) unless—

7 “(A) it is an operating foundation (as defined
8 in section 4942 (j) (3)) , or

9 “(B) not later than the close of the organiza-
10 tion's first year after its taxable year in which such
11 contributions are received, such organization makes
12 a qualifying distribution (as defined in section 4942
13 (g)) which is treated (in accordance with section
14 4942 (h)) as a distribution out of corpus in an
15 amount equal to 100 percent of all such contribu-
16 tions.

17 Subparagraph (B) shall not apply to a contribution to
18 an organization described in subparagraph (B) unless
19 the taxpayer obtains adequate records or sufficient
20 evidence from the organization showing that the orga-
21 nization made the distributions as required therein.

22 “(4) ALLOCATION OF BASIS.—In the case of a
23 charitable contribution of less than the taxpayer's entire
24 interest in the property contributed, the taxpayer's ad-
25 justed basis in such property shall be allocated between

1 the interest contributed and any interest not contributed
2 in accordance with regulations prescribed by the Secre-
3 tary or his delegate.

4 “(5) CROSS REFERENCE.—

“For treatment of gain in a case where the taxpayer
elects to treat the fair market value of property as the
amount to be taken into account, see section 83.”

5 (2) GIFTS TREATED AS SALE.—Part II of subchap-
6 ter B of chapter 1 of such Code (relating to items spe-
7 cifically included in gross income) is amended by adding
8 at the end thereof the following new section:

9 **“SEC. 83. CERTAIN GIFTS TO CHARITY TREATED AS SALES**
10 **OF PROPERTY.**

11 “(a) COMPUTATION AND RECOGNITION OF GAIN.—

12 If a taxpayer—

13 “(1) has made a charitable contribution of property,
14 and

15 “(2) has elected to treat the fair market value of
16 the property as the amount of the charitable contribu-
17 tion pursuant to section 170 (e) ,

18 the contribution shall be treated for purposes of this subtitle
19 as a sale (at the time of the contribution) of the property
20 to the donee for an amount equal to the fair market value
21 of such property, and the gain on such sale shall be
22 recognized.

1 “(b) LIMITATION.—In the case of a charitable con-
2 tribution to an organization to which section 170(e) (1)
3 does not apply of property—

4 “(1) which is described in section 170(e) (2)
5 (A), and

6 “(2) to which subparagraphs (B) and (C) of sec-
7 tion 170(e) (2) do not apply.

8 only that portion of the gain which would not be treated as
9 gain from the sale of a capital asset held for more than 12
10 months shall be recognized.

11 “(c) ADJUSTMENTS TO BASIS.—The basis of the prop-
12 erty acquired by gift to which this section applies shall be
13 the donor's adjusted basis (for purposes of determining gain)
14 increased by the amount of any gain recognized by the
15 donor on the contribution under this section.”

16 (3) CLERICAL AMENDMENT.—The table of sec-
17 tions for part II of subchapter B of chapter 1 is amended
18 by adding at the end thereof the following item:

“Sec. 83. Certain gifts to charity treated as sales of
property.”

19 (d) BARGAIN SALES TO CHARITABLE ORGANIZA-
20 TIONS.—Section 1011 (relating to adjusted basis for deter-
21 mining gain or loss) is amended—

22 (1) by striking out “The” at the beginning and
23 inserting in lieu thereof:

1 “(a) GENERAL RULE.—The”, and

2 (2) by adding at the end thereof the following
3 new subsection:

4 “(b) BARGAIN SALE TO A CHARITABLE ORGANIZA-
5 TION.—If a deduction is allowable under section 170 (relat-
6 ing to charitable contributions) by reason of a sale, then the
7 adjusted basis for determining the gain from such sale shall
8 be that portion of the adjusted basis which bears the same
9 ratio to the adjusted basis as the amount realized bears to
10 the fair market value of the property.”

15 SEC. 513. LETTERS, MEMORANDUMS, ETC.

16 (a) TREATMENT AS PROPERTY WHICH IS NOT A
17 CAPITAL ASSET.—Section 1221 (3) (relating to definition
18 of capital asset) is amended to read as follows:

19 “(3) a copyright, a literary, musical, or artistic
20 composition, a letter or memorandum, or similar prop-
21 erty, held by—

22 “(A) a taxpayer whose personal efforts created
23 such property,

24 “(B) in the case of a letter, memorandum, or
25 similar property, a taxpayer for whom such prop-
26 erty was prepared or produced, or

1 “(C) a taxpayer in whose hands the basis of
2 such property is determined, for purposes of deter-
3 mining gain from a sale or exchange, in whole or
4 part by reference to the basis of such property in
5 the hands of a taxpayer described in subparagraph
6 (A) or (B);”.

7 (b) CONFIRMING AMENDMENTS.—

8 (1) Section 341 (c) (5) (A) (iv) (relating to defi-
9 nition of subsection (c) asset in the case of collapsible
10 corporations) is amended to read as follows:

11 “(iv) property (unless included under
12 clause (i), (ii), or (iii)) which consists of a
13 copyright, a literary, musical, or artistic com-
14 position, a letter or memorandum, or similar
15 property, or any interest in any such property,
16 if the property was created in whole or in part
17 by the personal efforts of, or (in the case of a
18 letter, memorandum, or similar property) was
19 prepared or produced in whole or in part for,
20 any individual who owns more than 5 percent in
21 value of the stock of the corporation.”

22 (2) Section 1231 (b) (1) (C) (relating to defini-
23 tion of property used in the trade or business) is amended
24 by inserting “, a letter or memorandum” before “, or
25 similar property”.

26 (c) EFFECTIVE DATE.—The amendments made by

- 1 this section shall apply to sales and other dispositions oc-
- 2 ccurring after July 25, 1969.

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Exhibit I - 21

GENERAL SERVICES ADMINISTRATION

National Archives and Records Service
Washington, D.C. 20408



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DATE: May 27, 1969
REPLY TO: Sherrod East, Consultant, NL
SUBJECT: Pre-Presidential Papers of Richard M. Nixon
TO: Assistant Archivist, NL

On March 25, 1969, pursuant to our telephone conversation the preceding week, I reported to your office to advise you concerning appropriate handling of the President's stored records relating to his career before January 20, 1969. After talking with you and members of the staff, I proceeded alone to the Executive Office Building to see Terry Good and Mrs. Anne V. Higgins who were to show me the records then in storage areas in FOB 7. With a Secret Service escort we proceeded there to make a preliminary inspection of the records. Mrs. Higgins and the SS man returned to their respective offices after a short time while Good and I worked into the afternoon making notes and plans on the assumption that we would have to work in the very crowded FOB storage quarters with more than 500 crates, shipping cartons, and some 17 file cabinets.

That same day, however, you and Mr. E. L. Morgan of the White House staff arranged to have the stored records moved to the National Archives Building forthwith. The move was accomplished by GSA on March 26 and 27. The records were received in Room 19E-3 by me, Mr. Percy Berry, and two newly recruited archival trainees. Unpacking and shelving of the papers had to begin immediately in order to make room for all the crates and storage boxes which, nevertheless, had to be stacked 4 and 5 high in no discernible order.

It was apparent that our plan, devised the first day, for identifying series of records as unpacking, reboxing, and shelving proceeded apace was essential to achieving initial intellectual and physical control of the papers, some of which had been in storage for many years. (See the inventory worksheet and accompanying instructions for its execution as enclosure 1.) Having been taught to recognize a record series, the trainees proceeded first to place the papers in NA containers and prepare temporary labels for each recognizable series, with each container within the series being numbered in sequence. Shelving was utilized as fast as it could be erected in our cramped quarters. At this stage it was not possible to predetermine any logical arrangement of series on the shelves. Our problems were further complicated by the indiscriminate mixing of all kinds of office property, memorabilia, books, mementoes, audiovisual materials, etc., with the records of a long and varied public and private career.

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A further complicating factor in the overall project was presented when our trainee crew was diverted to perform priority arrangement, boxing and labeling of some 45 cubic feet of RMN papers which had been hurriedly separated from his storage files and deeded to the U.S. Government before December 31, 1968. Although these papers have been separately described from the main body of Nixon papers (not yet deeded) they will at a future time have to be integrated with the respective series or as discrete series in the main body of records.

Work has proceeded rapidly under far from ideal conditions. Improvisation has been a frequent necessity if not the rule. I have been impressed with the ability and industry of all the Presidential Library trainees. A dozen have worked on the project for varying periods, but no one trainee has been on it throughout. The average number available at one time was four. Scheduling of assignments for the trainees is being ably managed by Mrs. Mary Walton Livingston, who has also informed herself about the project so that she can supervise future work on the papers including necessary reference service with possible assistance of trainees or Terry Good from the EOB staff.

Since the entire collection has now, after two months, been processed through the initial stages of boxing, temporary labeling, and preparation of series inventory worksheets, some statistical analysis showing what the problem was and how much we have accomplished is in order.

We received 4 2-drawer, 5 4-drawer, and 13 5-drawer legal-size steel file cabinets & more than 500 miscellaneous-sized shipping boxes, single-drawer cardboard storage file cases, and odd-sized crates.

The records, all having been identified on series inventory worksheets, are now housed in the following: 2 4-drawer, 4 2-drawer, 11 5-drawer legal size steel cabinets; 2 locked wooden crates; 2 nailed wooden oversize crates; 1 aluminum suitcase; 910 open-face document boxes; 303 records center boxes; 1,247 NA gray document boxes; and 95 NA oversize gray document boxes.

The collection includes some 465 separate series of papers. (This figure is subject to some future change when possible consolidation of some few "series" may be found appropriate.) It measures in overall some 1,058 linear feet of papers; 27 center boxes of accountable (i.e., listed by title and donor) books; 39 center boxes of unaccountable or unlisted books; 64 document boxes of sound tapes; 47 oversize document boxes of motion picture film and 28 oversize boxes of memorabilia, mementoes, and artifacts.

As of the date of this report 3/4 of the final-type labeling has been completed and the entire collection is under control for reference and accessioning purposes. For the present, intellectual and physical locator control of the papers is through two sets of the series inventory worksheets in two loose-leaf books each. In Set I, Book 1, the sheets are arranged topically or according to positions held during

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Mr. Nixon's career up until he became President. Within each such grouping there is a chronological breakdown as appropriate or an arrangement of series from the general to the specific (sometimes from the important to the less important).

Set II, Book 1, is a more or less strict chronological arrangement of another copy of each of the series worksheets with some topical arrangement of sheets in each of several period blocks.

Book 2 in each of the sets contains special grouping of series sheets and special item lists of titles in each category. For example, a series sheet describing "Audiovisual material-Tapes" will be followed by a listing of all tapes by title by year. Another sheet will describe the category "Motion picture film" followed by an item list of film titles, etc.

The arrangement of sheets in these books is experimental and it can be altered in a variety of ways as experience or judgment of future custodians of the papers might dictate. We are talking here of Xerox copies of the original hand-written inventory worksheets prepared by the trainees assigned to the project. The original sheets are arranged according to the names of the persons preparing them.

Handwritten: Final Review
It is recommended that the worksheets in Set I, Books 1 and 2, be edited for consistency in style and terminology and then typed in the present format so that a copy can be sent to the White House for examination and suggestions as well as to show the present level of control we have established for the records. In due course, consideration can be given to preparation of a formal NA style inventory or such additional special lists or indices as may be required.

The current labeling project should be completed. If and when the papers are removed to another stack location they should be moved and shelved in as logical a sequence of series as can be devised, presumably that established for the inventory. The inventory on the series worksheets will then have to be corrected to show new stack, row, and shelf location.

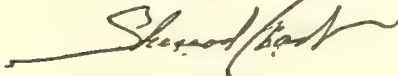
Handwritten: []
We emphasize that the work accomplished thus far is simply that preliminary to more sophisticated arrangement and description of an important collection. Since the papers for the most part are not yet decided to the United States, no appraisal of the papers for permanent retention or elimination of duplicate or extraneous material has been attempted.

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4

As heretofore indicated, further work should await some further clarification of White House wishes and intentions and perhaps a careful study by selected professional staff yet to be designated who will have responsibility for planning and administering the holdings of a future Richard M. Nixon Library.

I have found this assignment both strenuous and challenging. Thank you and the Archivist for the opportunity to work on this as well as the project last fall and winter.



SHERROD E. EAST

pressed her approval of the speed and thoroughness with which the papers have been arranged, labeled, and described, and offered her help in filling in certain gaps in the information concerning them."

On July 29, 1969, Dr. Reed, the Assistant Archivist for Presidential Libraries, wrote a memorandum to the Archivist (Exhibit I-27) in which he expressed his concern over the unsatisfactory condition of the storage areas for the pre-Presidential papers and other items of President Nixon. Throughout the memorandum he refers to the papers as being in storage.

These memoranda from Archives personnel referring to the Nixon papers give the staff the impression, confirmed by those Archives personnel interviewed by the staff, that the Archives believed that the pre-Presidential papers of President Nixon that were delivered to the Archives on March 26-27, 1969, were being maintained there for storage purposes and that the Archives expected and hoped that they would be given to the government in the future. During this time, however, no one at the Archives was aware of any specific intention of the President or any of his personal representatives on the White House staff to make any gifts of the papers they had in storage on any particular date. In addition, the staff is not aware that any one at the General Services Administration at that time knew that the President intended a portion of the papers delivered to the National Archives on March 26-27, 1969, to have been treated as a gift to the United States. They may have understood that the President intended to make future gifts of his papers to be housed in his Presidential Library, but not that there was an intent for any portion of the papers to be a gift on March 26-27, 1969.

Staff Analysis

Not only does the staff question whether there was actually an intent on the part of the President to make a gift of any portion of his papers on March 26-27, 1969, but also the staff has found no evidence that any one at the National Archives or the General Services Administration believed anything other than that all of the papers were delivered for the purpose of courtesy storage and archival processing. The staff has concluded that the Archives expected and hoped that these papers would be deeded to the United States in the future but that neither the National Archives nor General Services Administration personnel believed that the President intended for any portion of the papers to be treated as a gift to the United States on March 26-27, 1969.

E. EVENTS RELATING TO THE SECOND GIFT OF PAPERS FROM OCTOBER THROUGH DECEMBER 1969

As indicated above, the staff believes that Ralph Newman did no work on the undeeded papers in April 1969 and that his first examination of, and work on, the papers occurred in November of that year. The staff traced the events relating to the papers from October through December 1969 to determine the activities, understandings, and intentions of those involved. The following is a discussion of the work done on the papers in this period.

with the availability of the deduction under the House version of the Tax Reform Act. Since Mr. Newman does not remember specifically receiving any information on the amount of the gift in that conversation, and since his first estimate of the general correspondence files was less than the \$500,000 amount, it appears to the staff that Mr. DeMarco may not have mentioned to Mr. Newman any amount to be designated in any conversations he had with Mr. Newman in 1969.

The staff suggests that if Mr. DeMarco did not mention a figure to Mr. Newman it was probably because he was not aware of a figure at that time. The staff has received no information on who determined the amount and told Mr. DeMarco, other than Mr. DeMarco's statement that it was the President's accountant in early 1969, Martin Feinstein of Vincent Andrews Inc. in New York. Mr. Feinstein told the staff, however, that he had not given Mr. DeMarco a figure. Only Mr. Blech has a recollection of a conversation with Mr. DeMarco in 1969 on the amount and so far he has not been able to find his notes which he said he made of that conversation (although he does have other notes from a conversation in 1969 with Mr. DeMarco relating to Mr. Nixon's taxes).

In any event, the events that transpired during this period suggest that there was an intent on Mr. Newman's part to designate a large gift consisting of the President's general correspondence files but that the change in the law relating to the effective date of the elimination of the deduction, which was the result of the House-Senate conference on the Tax Reform Act, caused Mr. Newman not to make this designation at the end of the year. Mr. Newman's telephone call to Mr. DeMarco on December 24, in which he asked directions as to what he should be doing, seems to indicate that the course of action on the Nixon papers had been changed as a result of the final passage of the 1969 Tax Reform Act two days earlier.

F. STATUS OF THE 1969 PAPERS IN EARLY 1970

After the President signed the Tax Reform Act on December 30, 1969, it was clear that a charitable contribution deduction for papers given in 1969 was available only for gifts made before July 25, 1969. The staff made attempts to determine what the individuals involved with President Nixon's papers believed was the status of the undeeded papers. The staff discussed this with the people at the National Archives who were involved with the President's papers and have received memoranda on the status of the papers. The staff has made similar inquiries to the people representing the President in this regard.

Impressions of National Archives personnel on the status of the papers in early 1970

On January 9, 1970, the Archivist of the United States, Dr. James B. Rhoads, wrote a memorandum (Exhibit I-33) to the Administrator of General Services in which he discussed the effect of the 1969 Tax Reform Act. The memorandum summarized the provision relating to the tax deduction for gifts of papers, and commented on the adverse effect of the provision on the donations of papers and manuscripts. It also indicated the impression of the Archivist (and others on his staff who reviewed the memorandum) that President Nixon would

have made a gift in 1969 but for the change in the law. The memorandum reads, in part, as follows:

"It now seems apparent that the prospect of claiming tax deductions has encouraged many persons to donate their papers to a Presidential Library or other manuscript repository. It is likewise plain that the lack of a tax incentive has slowed up the flow of gifts to Presidential Libraries. Foremost in importance was the expected donation by President Nixon of another increment of his pre-Presidential papers as a second installment to those deeded to the Government of the United States in December 1968. No such donation was made in December 1969, although we understand all plans had been made for it."

On February 2, 1970, Dr. Rhoads wrote another memorandum to the GSA Administrator titled "Topics for White House Discussion." The memorandum (Exhibit I-34) was prepared for use by the Administrator in a discussion with H. R. Haldeman concerning the development of a Richard Nixon Presidential Library. The memorandum discusses the status of the Nixon papers, the relations with the Richard Nixon foundation, staffing, and other projects to be undertaken. The following is the part of the memorandum relating to the status of the Nixon papers:

"1. Most of the pre-Presidential papers are now in the National Archives. A portion of these have been deeded to the Government and that portion has been boxed, labelled and listed. The remainder of the pre-Presidential papers, here on courtesy storage, have been listed by categories. None of the papers are available to anyone except NARS staff without permission from the President.

"2. We had expected a deed of gift from the President covering a second installment of papers before the end of the calendar year, but the Tax Reform Act apparently eliminated this.

"3. We have no official duties yet relating to Presidential papers now being created and filed in the White House Central File or in any White House staff office.

"4. We receive, catalog and store all gifts received by the President and transferred to the National Archives Building by the White House Gift Unit."

The staff understands that both Mary Livingston and Dr. Reed were involved in the preparation of both of these memoranda. These memoranda indicate that in early 1970 the National Archives personnel did not view any portion of the papers transferred to the National Archives on March 26-27, 1969, as actually having been given to the Government at any time during the year. Dr. Reed and Mrs. Livingston are the key people in the Presidential Libraries office of the National Archives, and they would have almost certainly known if any gifts had actually been made. It is clear that they were aware that gifts of the papers were intended to be made and they expected these gifts to be made. This is evidenced by Mr. Newman's and Mrs. Livingston's work on the papers in November and December 1969.

Loan Receipt Written by Anne Higgins

In January 1970 the Archives sent eight folders of papers from the 1968 campaign to Mrs. Anne Higgins of the White House staff. She

THE WHITE HOUSE

WASHINGTON

JUNE 16, 1969

JUN 17 1969

TO: ED MORGAN
FROM: JOHN EHRLICHMAN

Handwritten:
H. R. Morgan
6/18
2/18

Vincent Andrews has lost Marty Feinstein.

The President has decided that he would like his income tax handled locally.

Do we have the ability to detail someone from IRS to handle his financial matters? If not, do you have a recommendation?

This is something we should move on rather quickly.

Another subject:

The President intends to use the San Clemente house for official visits and he intends to use his den as an office for Presidential activities. What write-offs are available to him?

[Will you please have someone carefully check his salary withholding to see if it takes into account the fact that he will be making a full 30% charitable deduction.

He would like you to secure the services of an expert if we don't have anyone in our office competent to make this review, and to have that person come in and review with him his new tax status, going over with him his last returns and his current estimate.

The President holds the view that a public man does very little of a personal nature. Virtually all of his entertainment and activity is related to his "business". He wants to be sure that his business deductions include all allowable items. For instance, wedding gifts to Congressmen's daughters, flowers at funerals, etc. He has in mind that there is some kind of a \$25 limitation on such expenses.

-2-

He suggests that we might review the returns of one or more previous Presidents for guidance.

Another subject:

What are the tax consequences of permitting others to use the Florida and California houses?

Another subject:

Note that the Smathers house in Florida will be used only for meetings and business, not for personal residence. Accordingly, the accountant should be instructed to depreciate and write off its expenses as business expenses.

THE WHITE HOUSE

WASHINGTON

JUNE 16, 1969

TO: ED MORGAN

FROM: JOHN EHRLICHMAN

JUN 17 1969

The President proposes to personally pay Julie for her work in the White House this summer and deduct it as a business expense.

Would you please determine whether he can properly do this or whether he is taking her as an exemption or if there is some other problem.

CONFIDENTIAL

Comptroller
Internal Revenue Service
Washington, DC 20224

July 16, 1969

MEMORANDUM TO: Edward L. Morgan
Deputy Counsel to the President
(for John Ehrlichman)
The White House

FROM: Roger V. Barth *RVB*
Assistant to the Commissioner

Following in brief are the results of my research and my reactions to the points raised in John Ehrlichman's two memos dated June 16, 1969, copies of which are attached, with regard to the President's income tax matters.

1. The President intends to use the San Clemente house for official visits and his den as an office for Presidential activities. A deduction would be permitted for depreciation and maintenance expenses (all property taxes and mortgage interest being deductible in any event) based on a formula considering the amount of time used for business purposes and the square foot percentage of the house used. It would be necessary to devise a system for keeping track of this business use.

2. I have determined that the total amount to be paid to the President in 1969 will be \$236,458.32, including the percentage of the \$50,000 taxable expense allowance. The Federal withholding will total \$74,983.26. The President's withholding statement reflects only two exemptions and there is no extra reduction in the withholding to reflect the fact that he will take the full 30% charitable deduction.

- 2 -

a. A determination of whether the President is being overwithheld must await the resolution (discussed below) of his deductions for business expense;

b. I would assume that his interest expense would be the same as the last few years, i.e., about \$25,000;

c. I would need to have an estimate of his real property taxes for 1969; I understand that a conclusion was reached in New York that the President is exempt from D. C. income tax.

d. The amount of the charitable 30% deduction can be determined. I am in the process of checking the legislative history on the \$50,000 allowance to determine whether it is included in adjusted gross income with the effect that it will increase the amount of the charitable deduction;

e. I would need an estimate of the President's outside income.

3. a. I personally agree with the idea that much of the President's expense is related to his "business." As with the business use of his residence, a careful system must be established for keeping track of business expenses to meet the substantiation requirements of Internal Revenue Code §274. It is clear from the statute, Title 3, §102, that the President must account for the \$50,000 for income tax purposes. When I examine the legislative history on this section I may have some more specific guidelines to give you.

b. Small gifts by the President which are related to his "business" would be deductible under the same conditions as his entertainment expense with the additional limitation that no more than \$25 per year may be deducted with respect to any one donee. Once again, a system of recordkeeping is necessary if it is not

- 3 -

already established. Note, however, that we must give thought to distinguishing between activities and gifts related to "being a President" and those related to running for reelection.

4. If the President were to permit others to use the Florida and California homes, deductibility of a portion of depreciation and maintenance expense would be tied into the space-time use formula discussed above in paragraph 1. In addition, unlike official visits, we would have to establish the business purpose for the President with regard to each person invited to use the homes.

5. Since the Smathers' house in Florida will be used only for meetings and business, I concur that depreciation and maintenance expense should be deducted.

6. Legally we might justify deduction as a business expense for a salary paid to Julie as a tour guide this summer. However, for the following reasons, I most strongly recommend that this not be done:

a. the amount involved is rather small;

b. this is always a factual question which could be raised on audit of whether she is necessary to the taxpayer's "business";

c. in addition to Federal withholding data which would get into the files at the IRS, information would have to be given to the Massachusetts tax authorities and to the Social Security people. There are too many entities involved for this to be kept confidential;

d. the newspapers have made much of the fact that she has been acting as a "volunteer." I think the risk of exposure of a business deduction attempt is too great;

e. Julie cannot be taken as an exemption by the President for 1969 unless three conditions are met:

- 4 -

1. he provides more than half of her support;
2. David does not take her as an exemption;
3. she and David do not file a joint return.

f. The best approach would be for the President to make a gift at the end of the summer to Julie. Although it would not be deductible to him, it would be tax-free to her.

7. I understand that someone at the Vincent Andrews firm is continuing to keep track of a number of the items mentioned above. I think it is most important that a regular accountant be retained either there or in Washington to handle the day-to-day recordkeeping. Once he is picked, I could work closely with him in establishing procedures and in handling problems as they arise.

Attachments

MEMORANDUM

TO: John Doar
Robert Sack

FROM: Smith McKeithen

DATE: June 4, 1974

SUBJECT: Meeting with Frank DeMarco

On May 29, 1974 from 10 a.m. until 5:30 p.m. and on May 30, 1974 from 9 a.m. to 11:30 a.m., Joe Woods and I met with Frank DeMarco and his attorney, Charles A. McNelis, at the offices of DeMarco, Barker, Beral & Pierno, 515 South Flower Street, Los Angeles, California. The interview took place over the course of these two days and ranged over a number of subjects. Some questions were raised by our conversation on the first day which were answered on the second. This memorandum will deal with these matters by topic, and not necessarily in the order in which they were discussed.

At the outset of the meeting, DeMarco said that before we arrived in his office he was telephoned by a reporter from the Baltimore Sun, who said he understood that something was happening that day. DeMarco told us that he replied that nothing out of the usual was happening, and that he was going to be in conference most of the day.

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statement, he had decided upon using the land trust, which he said is a common vehicle when more than one purchaser of property is involved. On April 24, 1969, DeMarco had executed a letter agreement with Title Insurance Trust Company which would make them trustee under this arrangement. The final paper work was completed in July. On July 1, 1969, he said that he had the escrow papers ready to close, but that he had no idea where the purchase money was coming from. On July 3, 1969, Kalmbach heard that Abplanalp would lend the money to the President, and told DeMarco to prepare the note. DeMarco said that the down payment was accomplished by the transfer of \$100,000 from the President's personal account in Key Biscayne (a check signed for the President by Claudia Val of Vincent Andrews, Inc.) and from a \$450,000 loan to the President from Robert Abplanalp.

° Also during the summer of 1969, work was being done on setting up the Nixon Foundation. DeMarco said that the organizational meeting of the trustees was held on September 3, 1969.

5. Meeting of October 8, 1969.

DeMarco said that on September 25, 1969, Kalmbach had a meeting in the White House with Morgan and Roger Barth, Assistant to the Commissioner of the Internal Revenue Service, and arranged

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for them to meet with DeMarco on October 8, 1969. It was at that meeting, DeMarco now recalls, that Morgan told DeMarco about Newman, and suggested that he contact Newman in connection, with the description and appraisal of the papers which had been delivered to the Archives the previous March. In addition, Morgan asked DeMarco to write an opinion on the California residency requirements for voting and on the payment of California income tax. Morgan told DeMarco at that meeting that they would have to get the appraisal done on the March, 1969 gift.

Also at that meeting, Barth was introduced as being available for information and assistance at the Internal Revenue Service. (DeMarco said that in November 1969, he did contact Barth after the exemption application for the Richard Nixon Foundation had been filed.) Barth explained to DeMarco and Morgan the way in which the tax returns the President, the Vice President, and the Speaker of the House were handled. After they had been prepared and signed, Barth explained, they were picked up by IRS personnel, processed by only three people, and stored in a confidential area in the IRS building. DeMarco said that while he had talked to Barth on the phone in May, 1969 (when DeMarco was in the office of John Davies, the Tour Director of the White House), this was the first time that he had met Barth in person.

DeMarco said that in remembering this meeting he can now explain the discrepancy between his original story and Ralph Newman's story as to when he first contacted Newman. He told us that although the notes taken during his first conversation with Newman were compatible with either on April or October initial contact, the fact that Newman's name was brought to his attention by Morgan during this meeting tends to affirm Newman's story that the first contact between them was made in October, 1969. DeMarco told us that he had not recalled this meeting when talking to the IRS or the staff of the Joint Committee on Internal Revenue Taxation.

6. Initial and subsequent contacts with Newman.

DeMarco said that soon after the meeting with Barth and Morgan, he contacted Newman. He reported that Newman said that he was going to remove "sensitive" material from the 'papers in the Archives. DeMarco said that while he later understood "sensitive" to mean expensive and valuable, at that time he believed that "sensitive" referred to materials concerning national security and items which would tend to embarrass or defame living persons. This is the first time, DeMarco said, that he remembered talking with Newman, and the first time that the sensitive material was mentioned. When asked how he rationalized the withdrawal of "sensitive" papers from the gift with his feeling that all the papers delivered to the

October conversations between DeMarco and Newman.

DeMarco's version.—In his statement to the staff of February 6, 1974 (Exhibit I-10), Frank DeMarco indicated that as of the end of October 1969 he had not received any final itemization or appraisal of the papers from either Messrs. Newman or Morgan and that he began pressuring Mr. Newman to have the job finished. He said that Mr. Newman told him in late October that he would be spending considerable time at the Archives going through the material and itemizing it and that he would definitely get the appraisal finished well in advance of the time to file the tax return.

Newman's version.—As indicated above, Mr. Newman now believes, after a careful examination of his correspondence, particularly his letter of October 31, 1969, and his telephone calls, that he actually talked to Mr. DeMarco for the first time in October 1969, not in April. In fact, his telephone records indicate that, on September 24, 1969, shortly after he returned from abroad, he called the Mudge, Rose law firm in New York. He told the staff that he thought that they were still representing the President and, therefore, called to determine what he should do on the papers, but was told that they no longer were representing the President. Mr. Newman indicated that he took no other action until the telephone call from Mr. DeMarco on October 31, which first commenced any activity on his part on the second gift of papers. Subsequent to the telephone call, Mr. Newman wrote a letter that day to Mr. DeMarco, which Mr. Newman indicated is the type of letter he writes when he first meets someone. Mr. Newman then indicated that following the telephone call he worked at the National Archives in early November and subsequently wrote and called Mr. DeMarco.

Apparently, Messrs DeMarco and Newman have somewhat the same recollection as to the sequence of events relating to the first telephone call, the subsequent work of Mr. Newman and the following calls. The significant difference, however, is that Mr. Newman now recalls that these occurred at the end of October and that the work took place in November, while Mr. DeMarco's recollection is still that the first call was in early April and that Mr. Newman worked on the undeeded papers at the Archives on April 8 and called Mr. DeMarco subsequent to that visit giving him a status report on the papers. Mr. Newman's telephone records and the records of the credit card used by Mr. DeMarco do not indicate any telephone calls from Mr. Newman to Mr. DeMarco in 1969 until November 5, although Mr. DeMarco believes that Mr. Newman made several calls between April and October.

Work on the undeeded papers in November and December

Newman's version.—Mr. Newman told the staff that on November 3, 1969, he went to the National Archives to begin his work on the 1969 gift, which he said was now "well organized and in the main in archival boxes." He said he called Mr. DeMarco on November 5, and shortly thereafter sent the President, Mr. DeMarco, and Mr. Morgan copies of a document (Exhibit I-28) reflecting his "first impressions of the material and giving an overall valuation of the material which included much more than just papers." This presumably is the "horseback figure" that Mr. DeMarco's notes say that Mr. Newman promised after their first phone conversation. Mr. Newman said fur-

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Exhibit I - 11

31 October 1969

Dear Mr DeMarco:

It was good to have an opportunity to speak with you this morning and I look forward to seeing you in Washington, if you can make it. Otherwise, I am sure we will be having several telephone conversations after my investigations of the archives.

Under separate cover I am sending you an article that I wrote several years ago about appraisals that you may find of some interest.

Sincerely yours,

Ralph G. Newman

Mr Frank DeMarco
611 West 6th Street
Los Angeles, California 90017

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Exhibit I - 28

7 November 1969

Dear Mr President:

I have now had an opportunity to make a preliminary examination of your Pro-Presidential Papers and Other Collected Materials, which are presently housed in the National Archives Building in Washington and to arrive at an estimate of the valuation. I herewith submit the results of my investigations.

As I had expected, I found the material to be unusually interesting and valuable.

It is my recommendation that certain of the more important letters, which are valuable, considered either as historical documents or autograph manuscripts, should be removed from these general files, inventoried very carefully, and placed in a separate facility under conditions which would allow access to them only at your direction. A vault cabinet in a small office in the Executive Office Building might satisfactorily serve this purpose.

It is my intention to begin the actual, detailed appraisal on Monday, the 17th of November.

Copies of the enclosed document have been sent to Messrs Frank DeMarco and Edward L. Morgan.

Respectfully yours,

Ralph G. Newman

Honorable Richard M. Nixon
The White House
Washington, D. C. 20500

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TELEPHONE WHITEHALL 4-3085

ABRAHAM LINCOLN BOOK SHOP, INC.

Fine Arts Appraisers

18 EAST CHESTNUT STREET
CHICAGO, ILLINOIS, 60611

Richard Milhous Nixon

The White House

Washington, D. C. 20500

1969.

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PROPERTY OF Richard Milhous Nixon
The White House
Washington, D. C. 20500

APPRAISAL

THE PAPERS AND OTHER COLLECTED MATERIALS OF

RICHARD MILHOUS NIXON

PRE-PRESIDENTIAL

On the morning and afternoon of Monday 3 November 1969, a general examination was made of the papers and other materials designated as the property of Richard Milhous Nixon and presently housed in the National Archives Building. Dr Daniel J. Reed, Assistant Archivist in charge of Presidential Papers, his assistant, Mrs Mary Walton Livingston, Mr Terry Good, Mr Michael P. Musick, and Mr Percy Berry, all gave their complete cooperation for this task and made it possible to make this initial survey as rapidly and efficiently as possible.

The materials are arranged in a manner which made examination comparatively easy. Under the direction of Mr Sherrod East and the other members of the staff of the National Archives, the preliminary work has been done with logic and efficiency. However, a more sophisticated arrangement and description required for a collection as important as The Nixon Papers will be needed and is planned by the National Archives.

With the information and data gathered at the National Archives, we are able to prepare the following summary of the size and approximate

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PROPERTY OF Richard Milhouse Nixon
The White House
Washington, D. C. 20500

THE PAPERS AND OTHER COLLECTED MATERIALS OF RICHARD MILHOUS NIXON,
 PRE-PRESIDENTIAL -- continued

appraised value of the Pre-Presidential Papers and Other Collected Materials
 of Richard Milhouse Nixon, now stored in the National Archives Building.

I. PAPERS

1,040 linear feet (12,480 inches)

Approximately 1,250,000 items

A.	1,237,500 items	
	@ \$1.00	\$1,237,500.00
B.	11,250 items	
	@ \$25.00	281,250.00
C.	1,250 items	
	@ \$250.00	<u>312,500.00</u>
		\$1,831,250.00

II. BOOKS

A. 41 boxes (average content 25 volumes)

Approximately 1,000 volumes
 @ \$6.00 \$6,000.00

B. 25 boxes (average content 25 volumes)

** Books autographed or inscribed to
 Richard M. Nixon

Approximately 600 volumes
 @ \$25.00 15,000.00

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page 3

PROPERTY OF Richard Milhous Nixon
The White House
Washington, D. C. 20500

THE PAPERS AND OTHER COLLECTED MATERIALS OF RICHARD MILHOUS NIXON
 PRE-PRESIDENTIAL -- continued

II. BOOKS -- continued

C. Titles in Quantity

1. Bound volumes

60 boxes (average content 50 volumes)

Approximately 3,000 volumes
 @ \$4.00 12,000.00

2. Pamphlets, etc.

Approximately 4,000 volumes
 @ \$1.00 4,000.00

\$37,000.00

III. TAPE RECORDINGS

64 boxes (average content 12 tapes each)

Average length of tape (estimate) 15 minutes

Approximately 750 tapes
 @ \$125.00

\$93,750.00

IV. FILMS

47 boxes (average content 2 films each)

Approximately 100 films
 @ \$250.00

\$25,000.00

PROPERTY OF Richard Milhous Nixon
The White House
Washington, D. C. 20500

THE PAPERS AND OTHER COLLECTED MATERIALS OF RICHARD MILHOUS NIXON
PRE-PRESIDENTIAL -- continued

V MEMORABILIA

28 boxes (average content 18 items each)

Approximately 500 items
@ \$20.00 \$10,000.00

VI. PHOTOGRAPHS

34 boxes (average count 450 photographs each)

Approximately 15,000 photographs
@ \$1.00 \$15,000.00

TOTAL \$2,012,000.00

The estimate of the appraised valuation of the foregoing items comprising the
Pre-Presidential Papers and other materials of Richard Milhous Nixon,
presently stored in the National Archives Building at Washington, D. C.,
as of the fifth day of November One Thousand Nine Hundred Sixty-Nine,
is Two Million Twelve Thousand Dollars (\$2,012,000.00). ✓

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Exhibit I - 31

7 November 1969

Dear Mr DeMarco:

Enclosed are two copies of my estimate of the appraised value of the Pre-Presidential material of Richard M. Nixon, currently stored in the National Archives Building in Washington. The total value is \$2,012,000.00:

You understand, of course, that this is just an estimate, based on an examination done under extreme pressure and in a very short period of time. It is, however, accurate enough to enable the President to make a determination as to the disposition of the material.

Copies of this document are being sent to the President and to Edward L. Morgan. If extra copies are required, please let me know.

Sincerely yours,

Ralph G. Newman

Mr Frank DeMarco
611 West 5th Street
Los Angeles, California 90017

saw H. R. Haldeman, and discussed some of Haldeman's papers which Haldeman was considering giving to the Archives.

On November 7, 1969, he mailed a copy of his preliminary survey valuing the President's collection of papers and other objects at \$2,012,000. He sent copies of his preliminary appraisal to the President, Morgan and DeMarco. He said that although he might have talked to DeMarco on November 5, to say that the preliminary appraisal would be mailed out soon, he said after he sent the appraisal, he had no reply from anybody. On November 12, 1969, his telephone records show that he called the White House. He said that this phone call might have been to Morgan because he was concerned about getting the work done on the papers. He does not recall expressing that concern to Morgan, however.

Newman said that he was in Washington with his wife on November 16, 1969, as a tourist. He said that he had called General Arch Hamlin, a personal friend who was a Military aide at the White House, who arranged for Newman's invitation to a White House prayer breakfast on that morning.

After the prayer breakfast service, Newman said that he and his wife stood in the receiving line. When they got to the President, he said he introduced himself and asked "Did you get my statement and the figure?" The President said, throwing his arms into the air, "I don't believe it!" Newman replied, "You better believe it, it was a conservative estimate." Newman said that because he was in

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the receiving line and there were other people present, he did not mention a dollar value to the President. He said, however, that it was clear to him that the President had read Newman's estimate, and was aware of the estimated value of his papers. Newman told us that this conversation might have been overheard by his then wife, Mary Lynn McCree, now manuscript librarian at the University of Illinois. (They were divorced in 1970).

Newman pointed out to us that he was not invited to this prayer breakfast because he was the President's appraiser, but rather because he was just a tourist and had a friend on the White House staff. He said he had no recollection of mentioning this conversation or meeting to either DeMarco or Morgan.

Newman said that he worked on the Nixon papers in the National Archives for several hours a day from November 17 through November 20, 1969. He said he confined his examination to the general correspondence of the President on those days, and returned again on December 8 to continue his work. He said that he evaluated correspondence up to a value of \$415,400, but did not go further because he had other clients and had not received any further instructions from the White House people. He said that if DeMarco had told him to go ahead and make an appraisal he would have, but he had no orders from DeMarco or from Morgan. Newman said he has no recollection of making any telephone calls to DeMarco or anyone else involved in the President's affairs between November 20 and December 8, 1969.

October conversations between DeMarco and Newman

DeMarco's version.—In his statement to the staff of February 6, 1974 (Exhibit I-10), Frank DeMarco indicated that as of the end of October 1969 he had not received any final itemization or appraisal of the papers from either Messrs. Newman or Morgan and that he began pressuring Mr. Newman to have the job finished. He said that Mr. Newman told him in late October that he would be spending considerable time at the Archives going through the material and itemizing it and that he would definitely get the appraisal finished well in advance of the time to file the tax return.

Newman's version.—As indicated above, Mr. Newman now believes, after a careful examination of his correspondence, particularly his letter of October 31, 1969, and his telephone calls, that he actually talked to Mr. DeMarco for the first time in October 1969, not in April. In fact, his telephone records indicate that, on September 24, 1969, shortly after he returned from abroad, he called the Mudge, Rose law firm in New York. He told the staff that he thought that they were still representing the President and, therefore, called to determine what he should do on the papers, but was told that they no longer were representing the President. Mr. Newman indicated that he took no other action until the telephone call from Mr. DeMarco on October 31, which first commenced any activity on his part on the second gift of papers. Subsequent to the telephone call, Mr. Newman wrote a letter that day to Mr. DeMarco, which Mr. Newman indicated is the type of letter he writes when he first meets someone. Mr. Newman then indicated that following the telephone call he worked at the National Archives in early November and subsequently wrote and called Mr. DeMarco.

Apparently, Messrs DeMarco and Newman have somewhat the same recollection as to the sequence of events relating to the first telephone call, the subsequent work of Mr. Newman and the following calls. The significant difference, however, is that Mr. Newman now recalls that these occurred at the end of October and that the work took place in November, while Mr. DeMarco's recollection is still that the first call was in early April and that Mr. Newman worked on the undeeded papers at the Archives on April 8 and called Mr. DeMarco subsequent to that visit giving him a status report on the papers. Mr. Newman's telephone records and the records of the credit card used by Mr. DeMarco do not indicate any telephone calls from Mr. Newman to Mr. DeMarco in 1969 until November 5, although Mr. DeMarco believes that Mr. Newman made several calls between April and October.

Work on the undeeded papers in November and December

Newman's version.—Mr. Newman told the staff that on November 3, 1969, he went to the National Archives to begin his work on the 1969 gift, which he said was now "well organized and in the main in archival boxes." He said he called Mr. DeMarco on November 5, and shortly thereafter sent the President, Mr. DeMarco, and Mr. Morgan copies of a document (Exhibit I-28) reflecting his "first impressions of the material and giving an overall valuation of the material which included much more than just papers." This presumably is the "horseback figure" that Mr. DeMarco's notes say that Mr. Newman promised after their first phone conversation. Mr. Newman said fur-

ther that he believes that on November 17, 18, 19, and 20 he continued his work at the Archives. He also indicated that he returned to Washington again and worked on the papers on December 8 and that this ended his work at the National Archives for the year.

Mary Livingston's version.—Mary Livingston, the assistant to Dr. Reed, the Assistant Archivist for Presidential Libraries, had been working on the Nixon pre-Presidential papers since she went to the Archives on April 1, 1969. She worked closely with Mr. Newman in his visits to the Archives in November and December and has a vivid recollection of what took place. She made a statement (Exhibit I-29) to the staff relating to her involvement with Mr. Newman and the pre-Presidential papers during the November and December period. The statement reads as follows:

"On November 3, 1969, Ralph Newman, the manuscript appraiser from Chicago, visited the National Archives Building to see the Nixon pre-Presidential papers that had been delivered March 26-27, 1969. Dr. Daniel J. Reed told me that I was to assist Mr. Newman in looking at the papers. He indicated to me that Mr. Newman's visit was to appraise papers for tax purposes. I understood that the President was going to make another gift of papers to the Government. I worked with Mr. Newman on November 3, 17, 18, 19, 20, and probably on December 8. I believe, but am not entirely certain, that he came back on December 8. I showed Mr. Newman the locations of pre-Presidential papers on tier 19E3. In particular, I showed him the general correspondence of the Vice President which was then in open-face boxes. He expressed great interest in this file and looked at it for some time. He asked particularly to see letters from various important people. He said the General Correspondence would be a good file to be deeded, but said some letters should be retained by the President and not deeded. In particular, he wanted to retain for the President communications from President Kennedy, President Johnson, President Hoover, former Vice President Humphrey, J. Edgar Hoover, Chief Justice Warren, and the Honorable Sam Rayburn. I suggested that correspondence with Martin Luther King also be retained by the President because there were some very interesting letters and memoranda in the file on King. Mr. Newman agreed that it would be a good file to retain. He also wanted to retain letters from foreign dignitaries. Miss Loie Gaunt had told me about the letter from Queen Elizabeth to Mr. Nixon that had been filed under 'England—Queen of—' and I showed that letter to Mr. Newman. He was very interested in retaining it for President Nixon. Mr. Newman's idea was just to extract the autographed letters and deed the rest of the correspondence in the folder. I told him that, without the rest of the folder, the autographed letters would not mean as much and asked if it wouldn't be better to exclude the entire folder. He agreed that whole folders rather than single letters should not be deeded. He did not return in 1969 after December 8 to see the Nixon papers. Before leaving, he asked me to have these materials that were not to be deeded—folders of letters from eight very important people and from an unspecified number of foreign dignitaries—extracted from the file so that they would no longer be mixed in with the main body of the 'General Correspondence.' With these

instructions, I went to work and, as a result, I withdrew the eight folders of correspondence with very important people and approximately 125 folders of correspondence with foreign dignitaries. The file on India, for example, contained a letter from Nehru. At the time this was done, we kept the 'General Correspondence' in its original open-face container but put each container into a standard archives box. I made a decision to place the folders that had been withdrawn for the President in separate archives boxes at the beginning of the file, so that future archivists would know that the original 'General Correspondence' had contained additional material. Mr. Percy Berry, an archives technician in the Office of Presidential Libraries, boxed the material in archives boxes under my direction and wrote up labels showing the names included in each box. The first box of the material to be deeded began with AANDAH and the last box ended with ZWIENG. There were no box numbers taken down by Mr. Newman in November or early December 1969 because the file was then still in the original open-face containers. These containers did not have numbers. On December 22, we finished boxing and labelling the file of General Correspondence. Boxes 1 through 17 contained the correspondence with very important people and foreign dignitaries that Mr. Newman requested be retained by the President. Boxes 18 through 845 contained the correspondence, Aandahl-Zwieng, that Mr. Newman had indicated would be deeded. On December 22, 1969, I wrote a memorandum to Dr. Reed, for the record, to show I had finished this assignment."

Mrs. Livingston said further that Mr. Newman worked almost exclusively on the "General Correspondence" but that he may have seen other papers. She said that she brought some of these to his attention, but that he spent very little time on them. She asserted that, to her knowledge, Mr. Newman did not make any notations on the number of boxes in other files of the papers in stack area 19E3.

Mrs. Livingston said that in Mr. Newman's visits up through December 8, 1969, which was his last visit to the Archives with respect to the Nixon papers in 1969, he did not designate to her anything that was going to be deeded except "the general correspondence as Vice President, minus the material he wanted withdrawn." Mrs. Livingston said that he did not mark the boxes in any way and that all of the General Correspondence was in open-face, unnumbered containers when Mr. Newman saw it in November and December 1969. She said that the material was not withdrawn when he was there and that the job wasn't finished until December 22, 1969, at which time she wrote a memorandum for the record (Exhibit I-30) specifying the folders that had been withdrawn. She said further:

"If you look at the names on the folders, you will see some listed by country and some by name of the individual, for example, Ben-Gurion. This required a look at the titles of the folders. This I did. I tried to be very careful about rearranging this file as I felt the papers would be very important for the future Richard Nixon library. Mr. Newman designated for retention by the President the very important people files—the eight I mentioned previously—and files on a few specific foreign dignitaries, but left only general instructions that the corre-

spondence with all other foreign dignitaries should also be withdrawn. That was not done and the boxes were not numbered until December 22, 1969. I then telephoned him and gave him the box numbers of the General Correspondence as rearranged. In a memo, December 22, 1969, for the information of Dr. Reed, I stated: 'Exact information on the number of archives boxes containing the general correspondence of President Nixon was telephoned today to the office of Ralph G. Newman, 18 E. Chestnut Street, Chicago, Illinois 60611 (312-787-1860). Mr. Newman needed the information in order to describe the material that is to be deeded by the President to the United States before December 31. According to Mr. Newman, the President will deed the main bulk of his general correspondence for the Vice-Presidential years, as contained in archives boxes 18-845, inclusive. Boxes 1-17 will not be deeded at this time.' "

Mrs. Livingston was quite certain when she met with the staff that as of December 8, 1969, Mr. Newman expressed the intent of giving only the General Correspondence file. She said that he also made this clear to her on December 22 when she telephoned him to indicate the box numbers of the General Correspondence file.

Mrs. Livingston said that her last contact with Mr. Newman in 1969 in regard to the pre-Presidential papers was on December 22. She said that she had no further contacts with Mr. Newman after December 22, 1969, on the Nixon papers, until March 27, 1970, which will be discussed below.

Newman's preliminary valuation of the pre-Presidential papers

On November 7, 1969, after his first examination of the papers on November 3, Mr. Newman sent a letter to the President (Exhibit I-28), copies of which also went to Messrs. DeMarco and Morgan, which gave an evaluation of his preliminary valuation of the pre-Presidential papers and other collected materials. The letter to the President reads as follows:

"I have now had an opportunity to make a preliminary examination of your Pre-Presidential Papers and Other Collected Materials, which are presently housed in the National Archives Building in Washington and to arrive at an estimate of the valuation. I herewith submit the results of my investigations.

"As I had expected, I found the material to be unusually interesting and valuable.

"It is my recommendation that certain of the more important letters, which are valuable, considered either as historical documents or autograph manuscripts, should be removed from these general files, inventoried very carefully, and placed in a separate facility under conditions which would allow access to them only at your direction. A vault cabinet in a small office in the Executive Office Building might satisfactorily serve this purpose.

"It is my intention to begin the actual, detailed appraisal on Monday, the 17th of November.

"Copies of the enclosed document have been sent to Messrs. Frank De Marco and Edward L. Morgan."

Mr. Newman's estimate was contained in a document titled "Appraisal—The Papers and Other Collected Materials of Richard

Milhoux Nixon, Pre-Presidential." The document contained a brief summary of the work done by Mr. Newman on November 3, 1969, and listed the National Archives personnel who assisted him. The document also gave a brief summary of the preliminary work done by Sherrod East and indicated that a "more sophisticated arrangement and description required for a collection as important as The Nixon Papers will be needed and is planned by the National Archives." Newman stated that from the information and data gathered at the National Archives he was able to prepare a summary of the size and approximate appraised value of the collection stored at the National Archives. A summary of the appraisal is as follows:

I. Papers	\$1, 831, 250
II. Books	37, 000
III. Tape recordings	93, 750
IV. Films	25, 000
V. Memorabilia	10, 000
VI. Photographs	15, 000
Total	2, 012, 000

Newman's letter to Morgan.—Mr. Newman forwarded a copy of the appraisal document to Mr. Morgan enclosing the covering letter to the President and asked Mr. Morgan to expedite the delivery of the material to him. Mr. Newman described the document in the letter as a summary of his "findings as a result of my investigation of the Pre-Presidential Papers and Other Collected Materials of Richard M. Nixon, presently housed in the National Archives Building in Washington." Mr. Newman indicated his intention to return to Washington on November 17 to begin the detailed appraisal of the material.

Newman's letter to DeMarco.—Mr. Newman also forwarded a copy of his estimate of the appraised value of the pre-Presidential material of President Nixon to Mr. DeMarco in a letter dated November 7, 1969 (Exhibit I-31). He made it clear in the letter that it was just an estimate and that it was based on an examination that had been done under extreme pressure and in a very short period of time. In the letter he stated, "It is, however, accurate enough to enable the President to make a determination as to the disposition of the material."

These letters give the impression that as of this time Mr. Newman was not aware of any designation of the papers as a gift to the National Archives. It gives the impression, rather that Mr. Newman prepared a "ballpark" estimate of the value of the material at the Archives so that a determination of what was to be given could be made from his analysis. Further, the letter makes clear that Mr. DeMarco knew that the value of the papers at the Archives greatly exceeded any \$500,000 amount contemplated for a 1969 gift.

Newman's valuation of the general correspondence

The staff has received from Mr. Newman his original estimate of the valuation of the general correspondence files, which is dated April 1969, and which states that the estimated total for 1969 is \$436,400 (Exhibit I-32). Mr. Newman did not remember when he actually made this estimate, but it is clear that it was not made in April 1969. Mr. Newman agreed in his staff interview that the estimate was not made until after his last visit at the National Archives and after Mary Livingston had completed her work on the general cor-

response files, following her instructions from Mr. Newman to separate the correspondence from important people and foreign dignitaries from the general correspondence. This would mean that at the earliest the estimate could not have been prepared until after December 8, his last visit to the National Archives, and probably was not made until after December 22, when Mary Livingston called him to inform him that she had completed what he had requested and told him the status of the general correspondence files at that time.

The staff does not understand and Mr. Newman could not explain the reason why the estimate was dated April 1969, unless the estimate had been prepared as late as March 1970, at which time Mr. Newman may have consulted his records and been confused, as he explained was the case with the dates on his appraisal document, or unless there was an intent on Mr. Newman's part to give the impression that this estimate was made on that date.

Mr. Newman told the staff that he does not remember when he first heard of the \$500,000 figure to which Mr. DeMarco referred. He said at first that he thought it may have been in his first conversation with Mr. DeMarco, which he believes occurred on October 31, 1969, but upon thinking back on the matter, he said that it could have been later and also indicated that it could very well have been on March 27, 1970. (The events of this date will be discussed below.)

If Mr. Newman had heard in 1969 about a \$500,000 amount that was intended to be given, the staff suggests that he would have recommended that the gift consist of more than just the General Correspondence files, since his estimate for the correspondence files only amounted to \$436,400. The staff believes that in November 1969 Mr. Newman understood that the President would make a large gift in 1969 since the House version of the Tax Reform Act eliminated this deduction as of the end of 1969. Under the House version of the bill, it was possible to make a large gift at the end of the year to cover a 6-year period—the current year and the 5-year carryover period.

Newman's impressions of the gift as of the end of 1969

Mr. Newman told the staff that he never understood nor was led to believe by Mr. DeMarco or Mr. Morgan that a gift had been given before July 25, 1969. He said he called Mr. DeMarco on December 24 (the staff has verified this call on his telephone records) to ask if there was anything he should be doing in view of the Tax Reform Act (which had passed Congress on December 22 and was sent to the President for his signature to enact it into law). He said that Mr. DeMarco told him there was nothing more for him to do then. Mr. Newman told the staff that as of the end of 1969 he was not aware that any gift had been made by the President and that if he had been asked to make any recommendations as to what was to be given, he would have recommended the General Correspondence files.

Staff analysis

Mr. Newman's and Mrs. Livingston's account of their activities concerning the examination of the undeeded papers in November and December 1969 suggests that when Mr. Newman first talked to Mr. DeMarco, probably in October, they were probably talking about an intent to make a large gift at the end of 1969 to cover the current year and a 5-year carryover period, which would have been consistent

TAX REFORM ACT OF 1969

P.L. 91-172, see page 509

House Report (Ways and Means Committee) No. 91-413,
August 2, 1969 [To accompany H.R. 13270]

[Senate Report (Finance Committee) No. 91-552,
November 21, 1969 [To accompany H.R. 13270]

Conference Report No. 91-782,
December 22, 1969 [To accompany H.R. 13270]

Cong. Record Vol. 115 (1969)

DATES OF CONSIDERATION AND PASSAGE

House August 7, December 22, 1969

Senate December 11, 22, 1969

The House Report, the Senate Report, and the Conference
Report are set out.

HOUSE REPORT NO. 91-413

The Committee on Ways and Means, to whom was referred the bill (H.R. 13270), to reform the income tax laws, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

I. SUMMARY

The Tax Reform Act of 1969 (H.R. 13270) represents a substantive and comprehensive reform of the income tax laws. Your committee is not aware of any prior tax reform bill of equal substantive scope.

From time to time, since the enactment of the present income tax, over 50 years ago, various tax incentives or preferences have been added to the internal revenue laws. Increasingly, in recent years taxpayers with substantial incomes have found ways of gaining tax advantages from provisions placed in the code primarily to aid some limited segment of the economy. In fact, in many cases they have found ways to pile one advantage on top of another. Your committee believes that this is an intolerable situation. It should not have been possible for 154 individuals with adjusted gross incomes of \$200,000 or more to pay no income tax. Ours is primarily a self-assessment system. If taxpayers are generally to pay their taxes on a voluntary basis they must feel that these taxes are fair. Moreover, only by sharing the tax burden on a fair basis is it possible to keep the tax burden at a level which is tolerable for all taxpayers.

TAX REFORM ACT OF 1969

[SENATE REPORT NO. 91-552

The Committee on Finance, to which was referred the bill (H.R. 13270) to reform the income tax laws, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

I. SUMMARY

The Tax Reform Act of 1969 (H.R. 13270) represents a substantive and comprehensive reform of the income tax laws. As the House committee report suggests, there is no prior tax reform bill of equal substantive scope.

From time to time, since the enactment of the present income tax over 50 years ago, various tax incentives or preferences have been added to the internal revenue laws. Increasingly in recent years, taxpayers with substantial incomes have found ways of gaining tax advantages from the provisions that were placed in the code primarily to aid limited segments of the economy. In fact, in many cases these taxpayers have found ways to pile one advantage on top of another. The committee agrees with the House that this is an intolerable situation. It should not have been possible for 154 individuals with adjusted gross incomes of \$200,000 or more to pay no Federal income tax. Ours is primarily a self-assessment system. If taxpayers are generally to pay their taxes on a voluntary basis, they must feel that these taxes are fair. Moreover, only by sharing the tax burden on an equitable basis is it possible to keep the tax burden at a level which is tolerable for all taxpayers. It is for these reasons that the committee amendments contain some 34 groups of tax reform provisions described in summary fashion at the end of this section.

The committee labored long and diligently to make a careful and comprehensive review of the House bill, yet meet its obligation to the Senate by ordering this bill reported on October 31. On September 4, immediately following the congressional recess, the committee began hearings on this bill which extended over 23 days and in which over 300 witnesses were heard. These hearings cover over 7,000 pages and the committee inserted into the Congressional Record day by day summaries of the statements of the witnesses as they were made to the committee. Following the completion of its public hearings, the committee considered the bill in 16 days of executive session in October. During this time, the committee carefully considered all aspects of the bill, as is indicated by the fact that in these executive sessions there were 457 motions made with respect to specific provisions. Daily press conferences were held during this period to keep the public and the Senate fully informed of the progress of the committee in reaching its decisions.

TAX REFORM ACT OF 1969

Senate Report

is then to be reduced by 6 percentage points a year for subsequent taxable years beginning in 1971 through 1974.

In addition to the above provisions, the committee amendments provide that, during the interim period through 1974, the 30-percent limit on gifts of appreciated property and the appreciated property rule which takes the appreciation into account for tax purposes in the case of property which would give rise to a long-term capital gain if sold are not to apply in the case of a person qualifying for the extra charitable contribution deduction (above the general 50-percent limit).

Effective date.—This provision is to apply with respect to contributions made in taxable years beginning after December 31, 1969.

3. Charitable Contributions of Appreciated Property (sec. 201(a) of the bill and sec. 170(e) of the code)

Present law.—Under present law, a taxpayer who contributes property which has appreciated in value to charity generally is allowed a charitable contributions deduction for the fair market value of the property and no tax is imposed on the appreciation in value of the property. A special rule (sec. 170(e)) applies, however, to gifts of certain property so that the amount of charitable contribution is reduced by the amount of gain which would have been treated as ordinary income under the recapture rules for certain mining property (sec. 617), depreciable tangible personal property (sec. 1245) and certain depreciable real property (sec. 1250), if the property contributed had been sold at its fair market value.

If property is sold to a charity at a price below its fair market value—a so-called bargain sale—the proceeds of the sale are considered to be a return of the cost and are not required to be allocated between the cost basis of the “sale” part of the transaction and the “gift” part of the transaction. The seller is allowed a charitable contributions deduction for the difference between the fair market value of the property and the selling price (often at his cost or other basis).

General reasons for change.—The combined effect, in the case of charitable gifts of appreciated property, of allowing a charitable contributions deduction for the fair market value (including the appreciation) and at the same time not taxing the appreciation, is to produce tax benefits significantly greater than those available with respect to cash contributions. The tax saving which results from not taxing the appreciation in the case of gifts of capital assets is the otherwise applicable capital gains tax which would be paid if the asset were sold. In the case of gifts of ordinary income property, however, this tax saving is at the taxpayer's top marginal income tax rate. In either case, this tax saving is combined with the tax saving of the charitable deduction at the taxpayer's top marginal rate.

Thus, in some cases it actually is possible for a taxpayer to realize a greater after-tax profit by making a gift of appreciated property than by selling the property, paying the tax on the gain, and keeping the proceeds. This is true in the case of gifts of appreciated property which would result in ordinary income if sold, when the taxpayer is at the high marginal tax brackets and the cost basis for the ordinary income property

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is not a substantial percentage of the fair market value. For example, a taxpayer in the 70-percent tax bracket could make a gift of \$100 of inventory (\$50 cost basis) and save \$105 in taxes (70 percent of the \$50 gain if sold, or \$35, plus 70 percent of the \$100 fair market value of the inventory, or \$70).

The committee does not believe that the charitable contributions deduction was intended to provide greater—or even nearly as great—tax benefits in the case of gifts of property than would be realized if the property were sold and the proceeds were retained by the taxpayer. In cases where the tax saving is so large, it is not clear how much charitable motivation actually remains. It appears that the Government, in fact, is almost the sole contributor to the charity. Moreover, an unwarranted tax benefit is allowed these taxpayers, who usually are in the very high income brackets. The committee, therefore, considers it appropriate to narrow the application of the tax advantages in the case of gifts of certain appreciated property.

Explanation of provision.—The House bill takes appreciation into account for tax purposes in five types of situations. The committee amendments retain two of these provisions.

Both the House bill and the committee amendments provide that appreciation is to be taken into account for tax purposes in the case of gifts to a private foundation, other than an operating foundation and other than a private foundation which within one year distributes an amount equivalent to the gift to public charitable organizations or private operating foundations. In addition, both the House bill and the committee amendments take appreciation in value into account for tax purposes in the case of property (such as inventory or works of art created by the donor) which would give rise to ordinary income if sold.

In the case where the appreciation is taken into account for tax purposes, the committee amendments provide that the charitable deduction otherwise available is to be reduced by the amount of appreciation in value in the case of assets which if sold would result in ordinary income, or in the case of assets which if sold would result in capital gain, by 50 percent (62½ percent for corporations) of the amount of this appreciation in value. The House bill would have given the taxpayer the option of reducing his charitable deduction to the amount of his cost or other basis for the property, or of including the appreciation in value of the property in his income (as ordinary income or capital gains income as the case may be) at the time of taking the charitable contribution deduction and deducting the full fair market value of the property as a charitable contribution.

Examples of the types of property giving rise to ordinary income where either some, or all, of the appreciation is to be taken into account without regard to the type of charitable recipient are gifts of inventory, "section 306 stock" (stock acquired in a non-taxable transaction which is treated as ordinary income if sold), letters, memorandums, etc., given by the person who prepared them (or by the person for whom they were prepared), and stock held for less than 6 months. Under the committee amendments, the portion of the appreciation taken into account in these cases is the amount

TAX REFORM ACT OF 1969

Senate Report

which would be treated as ordinary income if the property were sold. This would be all of the appreciation in the case of gifts of inventory but in the case of gifts of depreciable tangible personal property used in the trade or business of the taxpayer, for example, it would be only the portion of the gain subject to recapture (under sec. 1245) since any remaining gain above this amount would still be treated as a capital gain not taken into account by this provision (unless the contribution were to certain private foundations). Under the House provision, it appears that the full appreciation would have been taken into account if any of the gain would (if sold) have been taxed as ordinary income.

Appreciation is also to be taken into account for tax purposes in the case of gifts of appreciated property (regardless of whether it is ordinary income property or long-term capital gains property) to private foundations, other than private operating foundations and other than private nonoperating foundations which within 1 year after the taxable year in which the gift is received distributes an equivalent amount to "public" charitable organizations or private operating foundations. The private nonoperating foundation, to comply with the one-year payment requirement, must distribute this amount in addition to distributing all of its income or an amount equal to the 5 percent payout requirement, whichever is higher.

The committee deleted the other types of situations covered in the House bill which would have taken the appreciation in value into account for tax purposes in gifts of appreciated property: gifts of future interests in property, gifts of tangible personal property, and the so-called bargain sale to charity.

In the case of future interests in property, the committee believed that inclusion of such property in the appreciated property rules could have a substantial adverse impact on charitable giving to public charities and schools, since this type of giving often may take the form of a future interest (such as the case of a remainder interest in trust).

The committee considers it appropriate to treat gifts of tangible personal property (such as paintings, art objects, and books not produced by the donor) to public charities and schools similarly to gifts of intangible personal property and real property. Moreover, the committee believes that the serious problems of valuation of gifts of tangible personal property would still remain even if the appreciation were to be taken into account for tax purposes, and that a more desirable method of controlling overvaluations is for the Internal Revenue Service to strengthen its audit procedures for reviewing the value claimed on such gifts. Special consideration is warranted even in the case of smaller contributions than those which presently are closely reviewed by the Commissioner's advisory panel on valuation of art objects.

In the case of the so-called bargain sales to charity—where a taxpayer sells property to a charitable organization for less than its fair market value (often at its cost basis)—the committee believes that the House provision would adversely affect giving to charities, as "bargain sales" have been a long-accepted form of making contributions of property to charities.

Effective dates.—The amendments made by this provision relating to gifts of certain appreciated property generally are to apply with respect

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to contributions paid after December 31, 1969. However, in the case of a contribution of a letter, memorandum, or similar property (to which sec. 514 of the bill applies), the amendments apply to such contributions made after December 31, 1968.

4. Repeal of 2-year Charitable Trust Rule (sec. 201(c) of the bill and sec. 673(b) of the code)

Present law.—Under present law, an individual may establish a trust for two years or more with income from the property he transfers to the trust being payable to charity for a period of at least 2 years. After the two years or more the property is returned to him. Although the individual does not receive a charitable contributions deduction in such a case, the income from the trust property is not taxed to the individual. This 2-year charitable trust rule is an exception to the general rule that the income of a trust is taxable to a person who establishes the trust where he has a reversionary interest in the trust which will or may be expected to take effect within 10 years.

General reasons for change.—The effect of the special 2-year charitable trust rule is to permit charitable contributions deductions in excess of the generally applicable percentage limitations of such deductions. For example, with the 50-percent limitation on such deductions contained in the committee amendments and the House bill, the maximum deductible contribution that could generally be made each year by an individual who had \$100,000 of dividend income (but no other income) would be \$50,000. However, if the individual transferred 70 percent of his stock to a trust with directions to pay the annual income (\$70,000) to charity for 2 years and then return the property to him, the taxpayer excludes the \$70,000 from his own income each year. In effect, the individual has received a charitable contribution deduction equal to 70 percent of his income.

The committee agrees with the House that taxpayers should not be allowed to avoid the limitations on the charitable contribution deduction by means of a 2-year charitable trust.

Explanation of provision.—In order to eliminate the above-described means of avoiding the generally applicable percentage limitations on the charitable contribution deduction, both the House bill and the committee amendments repeal the 2-year trust provision (sec. 673(b)). Accordingly, an individual no longer is to be able to exclude the income from property placed in a trust to pay the income to a charity for a period of at least 2 years from his income. As a result, a person who establishes a trust will be taxable on its income, whether or not the income beneficiary is a charity, where the individual has a reversionary interest which will or may be expected to take effect within 10 years from the time the income-producing property is transferred to the trust.

Effective date.—This provision is to apply with respect to transfers in trust made after April 22, 1969.

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There is no comparable provision in the House bill.

Effective date.—This amendment applies to capital losses sustained in taxable years beginning after December 31, 1969.

5. Collections of Letters, Memorandums, etc. (sec. 514 of the bill and secs. 1221(3) and 1231(b) (1) (C) of the code)

Present law.—Under present law, copyrights and literary, musical or artistic compositions (or similar property) are excluded from the definition of a capital asset, if they are held by the person whose efforts created the property (or by a person who acquired the property as a gift from the person who created it). Thus, gain arising from the sale of such a book, artistic work, or similar property is treated as ordinary income, rather than as capital gain. However, since collections of letters, memorandums, etc. (including those prepared by or for, directed to, or given to, the individual) are not specifically excluded from the definition of a capital asset, gains from the sale of such property are accorded capital gains treatment.

General reasons for change.—The rationale underlying the present law treatment of copyrights, artistic works, and similar property in the hands of the person who created them (or in the possession of a person who received the property as a gift from the person who created it) is that the holder of the property is, in effect, engaged in the business of creating and selling the artistic work or similar property (or is selling property created by the personal efforts of another who gave him the property). In view of this, gain arising from the sale of such property is treated as ordinary income derived as compensation for personal services rendered by the person (or the contributor), rather than as a capital gain from the sale of property held as a capital asset.

The committee believes that letters, memorandums, papers, etc. (or collections thereof) are essentially similar to a literary or artistic composition which is created by the personal effort of the taxpayer (or of the person who gave the property to the taxpayer), and should be classified in the same manner for purposes of the tax law. In the one case, a person who sells a book written by or for him is treated as receiving ordinary income for the product of personal efforts (i. e., compensation for personal services rendered). In another case, one who sells a letter or memorandum written by or for him is treated as receiving capital gain on the sale, even though the product he is selling is, in effect, the result of personal efforts.

Explanation of provision.—The bill provides that letters, memorandums, and similar property (or collections thereof) are not to be treated as capital assets, if they are held by a taxpayer whose personal efforts created the property or for whom the property was prepared or produced (or by a person who received the property as a gift from the person who created or prepared it). For this purpose, letters and memorandums addressed to an individual are considered as prepared for him. Gains from the sale of these letters and memorandums, accordingly, are to be treated as ordinary income, rather than as capital gains.

Since in the case of charitable contributions of ordinary income property the unrealized appreciation in the contribution has the effect of lim-

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iting the charitable contribution deduction under another provision in this bill to the cost or other basis of the property, the treatment of these letters, memorandums, etc., as giving rise to ordinary income will have an impact on the charitable contribution deduction available with respect to them under this other provision. The effect will be that, to the extent papers, memorandums, etc., have no cost basis, no charitable contribution deduction will be available with respect to gifts of such property.

Effective date.—The amendments made by this provision are to be applicable with respect to sales and other dispositions occurring after December 31, 1968.

6. Holding Period of Capital Assets (sec. 1222 of the code)

Present law.—Capital gains on assets held longer than 6 months are considered long-term capital gains. In the case of individual taxpayers, 50 percent of the excess of net long-term capital gains over net short-term capital losses is included in income. In the case of corporations, the excess is taxed at a rate of 25 percent, rather than at the regular 48 percent corporate rate. Gains realized on the sale or exchange of capital assets held for not more than 6 months are considered as short-term capital gains, and generally they are fully taxable as ordinary income.

Problem.—The House felt that a better line of demarcation between gains for investment and speculative gains would be a 12-month holding period rather than the 6-month holding period of existing law. The committee, however, was concerned (as also was the Treasury Department) as to the impact this might have on the willingness of investors to take risks and, thus, on capital investments and on revenues.

Explanation of provision.—The House bill would have extended the holding period for long-term capital gains from 6 months to 12 months. The committee restored the 6-month holding period of present law.

7. Total Distributions From Qualified Pension, Etc., Plans (sec. 515 of the bill and secs. 402(a), 403(a) (2), and 72(n) of the code)

Present law.—Under present law, an employer who establishes a qualified employee pension, profit-sharing, stock bonus, or annuity plan is allowed to deduct contributions to the trust, or if annuities are purchased, may deduct the premiums. The employer contributions generally are not taxed to the employee until the amounts credited to his account are distributed or "made available" to him. In addition, income earned by the trust—or the earnings on reserves set aside by an insurance company for employee benefits—are exempt from tax if the employee trust is exempt (under sec. 501(a)).

On retirement, in the usual case the employee receives annual benefit payments which are taxed as ordinary income under the annuity rules (sec. 72) when the amounts are distributed, to the extent they do not represent a recovery of the amounts contributed by the employee. However, under an exception to this general rule, if the employee receives his benefits in a lump-sum distribution from the plan,¹ the payment is taxed as a

¹Self-employed persons receiving "H.R. 10" plan distributions are taxed at ordinary income rates under a special 5-year averaging provision (sec. 72(n) (2)).

91st CONGRESS
1st Session

H. R. 13270

[IN THE SENATE OF THE UNITED STATES
DECEMBER 11, 1969

Senate passed substitute version ordered to be printed

(All after the enacting clause of the House passed bill was stricken out and the language below in italics was inserted in lieu thereof.)

AN ACT

To reform the income tax laws.

1 *SECTION 1. SHORT TITLE, ETC.*

2 *(a) SHORT TITLE.—This Act may be cited as the “Tax*
3 *Reform Act of 1969”.*

4 *(b) TABLE OF CONTENTS.—*

II—O

1 to members shall be denied for any taxable year beginning
2 before January 1, 1971.

3 **TITLE II—INDIVIDUAL DEDUCTIONS**

4 **Subtitle A—Charitable Contributions**

5 **SEC. 201. CHARITABLE CONTRIBUTIONS.**

6 (a) *LIMITATIONS AND SPECIAL RULES.—*

7 (1) *IN GENERAL.—*Section 170 (relating to chari-
8 table, etc., contributions and gifts) is amended—

9 (A) by redesignating subsections (h) and (i)
10 as (i) and (j), respectively, and by redesignating
11 subsection (d) as (h), and

12 (B) by striking out subsections (a), (b), (c),
13 (e), and (f) and inserting in lieu thereof the follow-
14 ing:

15 “(a) *ALLOWANCE OF DEDUCTION.—*

16 “(1) *GENERAL RULE.—*There shall be allowed as a
17 deduction any charitable contribution (as defined in
18 subsection (c)) payment of which is made within the
19 taxable year. A charitable contribution shall be allowable
20 as a deduction only if verified under regulations pre-
21 scribed by the Secretary or his delegate.

22 “(2) *CORPORATIONS ON ACCRUAL BASIS.—*In the
23 case of a corporation reporting its taxable income on the
24 accrual basis, if—

1 “(A) the board of directors authorizes a charita-
2 ble contribution during any taxable year, and

3 “(B) payment of such contribution is made after
4 the close of such taxable year and on or before the
5 15th day of the third month following the close of
6 such taxable year,

7 then the taxpayer may elect to treat such contribution as
8 paid during such taxable year. The election may be made
9 only at the time of the filing of the return for such taxable
10 year, and shall be signified in such manner as the Sec-
11 retary or his delegate shall by regulations prescribe.

12 “(3) FUTURE INTERESTS IN TANGIBLE PERSONAL
13 PROPERTY.—For purposes of this section, payment of a
14 charitable contribution which consists of a future interest
15 in tangible personal property shall be treated as made
16 only when all intervening interests in, and rights to the
17 actual possession or enjoyment of, the property have ex-
18 pired or are held by persons other than the taxpayer or
19 those standing in a relationship to the taxpayer described
20 in section 267(b). For purposes of the preceding sen-
21 tence, a fixture which is intended to be severed from the
22 real property shall be treated as tangible personal prop-
23 erty.

24 “(b) PERCENTAGE LIMITATIONS.—

25 “(1) INDIVIDUALS.—In the case of an individual,

1 *the deduction provided in subsection (a) shall be limited*
2 *as provided in the succeeding subparagraphs.*

3 *“(A) GENERAL RULE.—Any charitable con-*
4 *tribution to—*

5 *“(i) a church or a convention or associa-*
6 *tion of churches,*

7 *“(ii) an educational organization which*
8 *normally maintains a regular faculty and cur-*
9 *riculum and normally has a regularly enrolled*
10 *body of pupils or students in attendance at the*
11 *place where its educational activities are regu-*
12 *larly carried on,*

13 *“(iii) an organization the principal pur-*
14 *pose or functions of which are the providing of*
15 *medical or hospital care or medical education or*
16 *medical research, if the organization is a hos-*
17 *pital, or if the organization is a medical research*
18 *organization directly engaged in the continuous*
19 *active conduct of medical research in conjunction*
20 *with a hospital, and during the calendar year*
21 *in which the contribution is made such organi-*
22 *zation is committed to spend such contributions*
23 *for such research before January 1 of the fifth*

1 *calendar year which begins after the date such*
2 *contribution is made.*

3 “(iv) *an organization which normally re-*
4 *ceives a substantial part of its support (exclu-*
5 *sive of income received in the exercise or per-*
6 *formance by such organization of its charitable,*
7 *educational, or other purpose or function con-*
8 *stituting the basis for its exemption under section*
9 *501(a)) from the United States or any State or*
10 *political subdivision thereof or from direct or in-*
11 *direct contributions from the general public, and*
12 *which is organized and operated exclusively to*
13 *receive, hold, invest, and administer property*
14 *and to make expenditures to or for the benefit of*
15 *a college or university which is an organization*
16 *referred to in clause (ii) of this subparagraph*
17 *and which is an agency or instrumentality of a*
18 *State or political subdivision thereof, or which*
19 *is owned or operated by a State or political*
20 *subdivision thereof or by an agency or instru-*
21 *mentality of one or more States or political sub-*
22 *divisions,*

23 “(v) *a governmental unit referred to in sub-*
24 *section (c)(1),*

25 “(vi) *an organization referred to in sub-*

1 section (c)(2) which normally receives a sub-
2 stantial part of its support (exclusive of income
3 received in the exercise or performance by such
4 organization of its charitable, educational, or
5 other purpose or function constituting the basis
6 for its exemption under section 501(a)) from
7 a governmental unit referred to in subsection
8 (c)(1) or from direct or indirect contributions
9 from the general public,

10 “(vii) a private foundation described in
11 subparagraph (E), or

12 “(viii) an organization described in section
13 509(a) (2) or (3),

14 shall be allowed to the extent that the aggregate of
15 such contributions does not exceed 50 percent of the
16 taxpayer's contribution base for the taxable year.

17 “(B) OTHER CONTRIBUTIONS.—Any chari-
18 table contribution other than a charitable contribu-
19 tion to which subparagraph (A) applies shall be
20 allowed to the extent that the aggregate of such con-
21 tributions does not exceed the lesser of—

22 “(i) 20 percent of the taxpayer's contri-
23 bution base for the taxable year, or

24 “(ii) the excess of 50 percent of the tax-
25 payer's contribution base for the taxable year over

1 the amount of charitable contributions allowable
2 under subparagraph (A) (determined without
3 regard to subparagraph (D)).

4 “(C) *UNLIMITED DEDUCTION FOR CERTAIN*
5 *INDIVIDUALS.*—Subject to the provisions of subsec-
6 tions (f)(6) and (g), the limitations in subpara-
7 graphs (A), (B), and (D), and the provisions of
8 subsection (c)(1)(B), shall not apply, in the case
9 of an individual for a taxable year beginning be-
10 fore January 1, 1975, if in such taxable year and
11 in 8 of the 10 preceding taxable years, the amount
12 of the charitable contributions, plus the amount of
13 income tax (determined without regard to chapter
14 2, relating to tax on self-employment income) paid
15 during such year in respect of such year or preced-
16 ing taxable years, exceeds the transitional deduction
17 percentage (determined under subsection (f)(6))
18 of the taxpayer’s taxable income for such year, com-
19 puted without regard to—

20 “(i) this section,

21 “(ii) section 151 (allowance of deductions
22 for personal exemption), and

23 “(iii) any net operating loss carryback to
24 the taxable year under section 172.

25 In lieu of the amount of income tax paid during any

1 *such year, there may be substituted for that year the*
2 *amount of income tax paid in respect of such year,*
3 *provided that any amount so included in the year in*
4 *respect of which payment was made shall not be*
5 *included in any other year.*

6 *“(D) SPECIAL LIMITATION WITH RESPECT*
7 *TO CONTRIBUTIONS OF CERTAIN CAPITAL GAIN*
8 *PROPERTY.—*

9 *“(i) In the case of charitable contributions*
10 *of capital gain property to which subsection*
11 *(c)(1)(B) does not apply, the total amount of*
12 *the unrealized capital gain of such property*
13 *which may be taken into account under sub-*
14 *section (a) for any taxable year shall not exceed*
15 *30 percent of the taxpayer's contribution base*
16 *for such year. For purposes of this subsection,*
17 *contributions of capital gain property to which*
18 *this paragraph applies shall, to the extent of the*
19 *unrealized capital gain of such property, be*
20 *taken into account after all other charitable*
21 *contributions.*

22 *“(ii) If, with respect to charitable contri-*
23 *butions described in subparagraph (A), the un-*
24 *realized capital gain of capital gain property*
25 *to which clause (i) applies exceeds 30 percent*

1 of the taxpayer's contribution base for any tax-
2 able year, such excess shall be treated, in a man-
3 ner consistent with the rules of subsection (d)
4 (1), as a charitable contribution of capital gain
5 property to which clause (i) applies (all of
6 which is attributable to unrealized capital gain)
7 in each of the 5 succeeding taxable years in
8 order of time.

9 “(iii) For purposes of this subparagraph,
10 the term ‘capital gain property’ means, with
11 respect to any contribution, any capital asset
12 the sale of which at its fair market value at
13 the time of the contribution would have resulted
14 in gain which would have been long-term capital
15 gain. For purposes of the preceding sentence,
16 any property which is property used in the trade
17 or business (as defined in section 1231(b)) shall
18 be treated as a capital asset.

19 “(iv) For purposes of this subparagraph,
20 the term ‘unrealized capital gain’ means, with
21 respect to any capital gain property, the amount
22 which would have been long-term capital gain,
23 if such property had been sold at its fair market
24 value at the time of its contribution.

1 “(E) CERTAIN PRIVATE FOUNDATIONS.—

2 *The private foundations referred to in subparagraph*
3 *(A)(vii) and subsection (e)(1)(B) are—*

4 “(i) a private operating foundation (as
5 *defined in section 4942(j)(3)),*

6 “(ii) any other private foundation (as
7 *defined in section 509(a)) which, not later than*
8 *the close of the foundation's first year after its*
9 *taxable year in which contributions are received,*
10 *makes qualifying distributions (as defined in*
11 *section 4942(g), without regard to paragraph*
12 *(3) thereof), which are treated, after the appli-*
13 *cation of section 4942(g)(4), as if such*
14 *contributions were made out of corpus (in accordance with section*
15 *4942(h)) in an amount equal to 100 percent*
16 *of such contributions, and with respect to which*
17 *the taxpayer obtains adequate records or other*
18 *sufficient evidence from the foundation showing*
19 *that the foundation made such qualifying distri-*
20 *butions, and*

21 “(iii) a private foundation all of the con-
22 *tributions to which are pooled in a common fund*
23 *and which would be described in section 509(a)*
24 *(3) but for the right of any substantial con-*
25 *tributor (hereafter in this clause called ‘donor’)*

1 or his spouse to designate annually the recipi-
2 ents, from among organizations described in
3 paragraph (1) of section 509(a), of the income
4 attributable to the donor's contribution to the
5 fund and to direct (by deed or by will) the pay-
6 ment, to an organization described in such
7 paragraph (1), of the corpus in the common
8 fund attributable to the donor's contribution;
9 but this clause shall apply only if all of the
10 income of the common fund is required to be
11 (and is) distributed to one or more organiza-
12 tions described in such paragraph (1) within 3
13 months after the close of the taxable year in
14 which the income is realized by the fund and
15 only if all of the corpus attributable to any
16 donor's contribution to the fund is required to
17 be (and is) distributed to one or more of such
18 organizations not later than one year after his
19 death or after the death of his surviving spouse
20 if she has the right to designate the recipients
21 of such corpus.

22 “(F) CONTRIBUTION BASE DEFINED.—For
23 purposes of this section, the term ‘contribution base’
24 means adjusted gross income (computed without re-
25 gard to any net operating loss carryback to the tax-

1 *able year under section 172).*

2 “(2) CORPORATIONS.—In the case of a corpora-
3 *tion, the total deductions under subsection (a) for any*
4 *taxable year shall not exceed 5 percent of the taxpayer's*
5 *taxable income computed without regard to—*

6 “(A) *this section,*

7 “(B) *part VIII (except section 248),*

8 “(C) *any net operating loss carryback to the*
9 *taxable year under section 172, and*

10 “(D) *section 922 (special deduction for Western*
11 *— Hemisphere trade corporations).*

12 “(c) CHARITABLE CONTRIBUTION DEFINED.—For
13 *purposes of this section, the term ‘charitable contribution’*
14 *means a contribution or gift to or for the use of—*

15 “(1) *A State, a possession of the United States, or*
16 *any political subdivision of any of the foregoing, or the*
17 *United States or the District of Columbia, but only if*
18 *the contribution or gift is made for exclusively public*
19 *purposes.*

20 “(2) *A corporation, trust, or community chest, fund,*
21 *or foundation—*

22 “(A) *created or organized in the United States*
23 *or in any possession thereof, or under the law of the*
24 *United States, any State, the District of Columbia,*
25 *or any possession of the United States;*

1 “(B) organized and operated exclusively for
2 religious, charitable, scientific, literary, or educa-
3 tional purposes or for the prevention of cruelty to
4 children or animals;

5 “(C) no part of the net earnings of which inures
6 to the benefit of any private shareholder or individ-
7 ual; and

8 “(D) no substantial part of the activities of
9 which is carrying on propaganda, or otherwise
10 attempting, to influence legislation, and which does
H not participate in, or intervene in (including the pub-
12 lishing or distributing of statements), any political
13 campaign on behalf of any candidate for public
14 office.

15 A contribution or gift by a corporation to a trust, chest,
16 fund, or foundation shall be deductible by reason of this
17 paragraph only if it is to be used within the United
18 States or any of its possessions exclusively for purposes
19 specified in subparagraph (B).

20 “(3) A post or organization of war veterans, or an
21 auxiliary unit or society of, or trust or foundation for,
22 any such post or organization—

23 “(A) organized in the United States or any of
24 its possessions, and

25 “(B) no part of the net earnings of which inures

1 to the benefit of any private shareholder or individ-
2 ual.

3 “(4) In the case of a contribution or gift by an in-
4 dividual, a domestic fraternal society, order, or associa-
5 tion, operating under the lodge system, but only if such
6 contribution or gift is to be used exclusively for religious,
7 charitable, scientific, literary, or educational purposes, or
8 for the prevention of cruelty to children or animals.

9 “(5) A cemetery company owned and operated ex-
10 clusively for the benefit of its members, or any corpora-
11 — tion chartered solely for burial purposes as a cemetery
12 corporation and not permitted by its charter to engage in
13 any business not necessarily incident to that purpose, if
14 such company or corporation is not operated for profit
15 and no part of the net earnings of such company or cor-
16 poration inures to the benefit of any private shareholder
17 or individual.

18 For purposes of this section, the term ‘charitable contribution’
19 also means an amount treated under subsection (h) as paid
20 for the use of an organization described in paragraph (2),
21 (3), or (4).

22 “(d) CARRYOVERS OF EXCESS CONTRIBUTIONS.—

23 “(1) INDIVIDUALS.—

24 “(A) IN GENERAL.—In the case of an individ-
25 ual, if the amount of charitable contributions de-

1 scribed in subsection (b)(1)(A) payment of which
2 is made within a taxable year (hereinafter in this
3 paragraph referred to as the 'contribution year')
4 exceeds 50 percent (30 percent, in the case of a con-
5 tribution year beginning before January 1, 1970)
6 of the taxpayer's contribution base for such year,
7 such excess shall be treated as a charitable contribu-
8 tion described in subsection (b)(1)(A) paid in each
9 of the 5 succeeding taxable years in order of time,
10 but, with respect to any such succeeding taxable year,
- 11 only to the extent of the lesser of the two following
12 amounts:

13 “(i) the amount by which 50 percent (30
14 percent, in the case of a contribution year be-
15 ginning before January 1, 1970) of the tax-
16 payer's contribution base for such succeeding
17 taxable year exceeds the sum of the charitable
18 contributions described in subsection (b)(1)(A)
19 payment of which is made by the taxpayer within
20 such succeeding taxable year (determined with-
21 out regard to this subparagraph) and the chari-
22 table contributions described in subsection (b)
23 (1)(A) payment of which was made in taxable
24 years before the contribution year which are

1 *treated under this subparagraph as having been*
2 *paid in such succeeding taxable year; or*

3 “(ii) *in the case of the first succeeding tax-*
4 *able year, the amount of such excess, and in the*
5 *case of the second, third, fourth, or fifth suc-*
6 *ceeding taxable year, the portion of such excess*
7 *not treated under this subparagraph as a chari-*
8 *table contribution described in subsection (b)(1)*
9 *(A) paid in any taxable year intervening be-*
10 *tween the contribution year and such succeeding*
11 — *taxable year.*

12 “(B) *SPECIAL RULE FOR NET OPERATING*
13 *LOSS CARRYOVERS.—In applying subparagraph*
14 *(A), the excess determined under subparagraph*
15 *(A) for the contribution year shall be reduced to*
16 *the extent that such excess reduces taxable income*
17 *(as computed for purposes of the second sentence of*
18 *section 172(b)(2)) and increases the net operat-*
19 *ing loss deduction for a taxable year succeeding the*
20 *contribution year.*

21 “(2) *CORPORATIONS.—*

22 “(A) *IN GENERAL.—Any contribution made*
23 *by a corporation in a taxable year (hereinafter in*
24 *this paragraph referred to as the ‘contribution year’)*
25 *in excess of the amount deductible for such year*

under subsection (b)(2) shall be deductible for each of the 5 succeeding taxable years in order of time, but only to the extent of the lesser of the two following amounts: (i) the excess of the maximum amount deductible for such succeeding taxable year under subsection (b)(2) over the sum of the contributions made in such year plus the aggregate of the excess contributions which were made in taxable years before the contribution year and which are deductible under this subparagraph for such succeeding taxable year; or (ii) in the case of the first succeeding taxable year, the amount of such excess contribution, and in the case of the second, third, fourth, or fifth succeeding taxable year, the portion of such excess contribution not deductible under this subparagraph for any taxable year intervening between the contribution year and such succeeding taxable year.

“(B) SPECIAL RULE FOR NET OPERATING LOSS CARRYOVERS.—For purposes of subparagraph (A), the excess of—

“(i) the contributions made by a corporation in a taxable year to which this section applies, over

“(ii) the amount deductible in such year under the limitation in subsection (b)(2),

1 *shall be reduced to the extent that such excess reduces*
 2 *taxable income (as computed for purposes of the*
 3 *second sentence of section 172(b)(2)) and increases*
 4 *a net operating loss carryover under section 172 to*
 5 *a succeeding taxable year.*

6 *“(C) CERTAIN CONTRIBUTIONS OF ORDINARY IN-*
 7 *COME AND CAPITAL GAIN PROPERTY.—*

8 *“(1) GENERAL RULE.—The amount of the tax-
 9 *able contribution of property otherwise taken into ac-*
 10 *count under this section shall be reduced by the sum of—**

11 *— “(A) the amount of gain which would not have*
 12 *been long-term capital gain if the property contri-*
 13 *buted had been sold by the taxpayer at its fair market*
 14 *value (determined at the time of such contribution),*
 15 *and*

16 *“(B) in the case of a charitable contribution to*
 17 *or for the use of a private foundation (as defined in*
 18 *section 509(a)), other than a private foundation de-*
 19 *scribed in subsection (b)(1)(E), 50 percent (63 1/2*
 20 *percent, in the case of a corporation) of the amount*
 21 *of gain which would have been long-term capital gain*
 22 *if the property contributed had been sold by the tax-*
 23 *payer at its fair market value (determined at the*
 24 *time of such contribution).*

25 *For purposes of applying this paragraph (other than in*

1 the case of gain to which section 617(d)(1), 1245(a),
2 1250(a), or 1251(a) applies), property which is prop-
3 erty used in the trade or business (as defined in section
4 1231(b)) shall be treated as a capital asset.

5 “(2) ALLOCATION OF BASIS.—For purposes of
6 paragraph (1), in the case of a charitable contribution
7 of less than the taxpayer's entire interest in the property
8 contributed, the taxpayer's adjusted basis in such prop-
9 erty shall be allocated between the interest contributed and
10 any interest not contributed in accordance with regula-
11 tions prescribed by the Secretary or his delegate.

12 “(f) DISALLOWANCE OF DEDUCTION IN CERTAIN
13 CASES AND SPECIAL RULES.—

14 “(1) IN GENERAL.—No deduction shall be allowed
15 under this section for a contribution to or for the use of
16 an organization or trust described in section 508(d) or
17 4948(c)(4) subject to the conditions specified in such
18 sections.

19 “(2) CONTRIBUTIONS OF PROPERTY PLACED IN
20 TRUST.—

21 “(A) REMAINDER INTEREST.—In the case of
22 property transferred in trust, no deduction shall be
23 allowed under this section for the value of a contri-
24 bution of a remainder interest unless the trust is a
25 charitable remainder annuity trust or a charitable re-

1 *mainder unitrust (described in section 661), or a*
2 *pooled income fund (described in section 642(c)*
3 *(5)).*

4 “(B) *INCOME INTERESTS, ETC.*—No deduction
5 *shall be allowed under this section for the value of*
6 *any interest in property (other than a remainder in-*
7 *terest) transferred in trust unless the interest is in*
8 *the form of a guaranteed annuity or the trust instru-*
9 *ment specifies that the interest is a fixed percentage*
10 *distributed yearly of the fair market value of the trust*
11 *property (to be determined yearly) and the grantor*
12 *is treated as the owner of such interest for purposes*
13 *of applying section 671. If the donor ceases to be*
14 *treated as the owner of such an interest for purposes*
15 *of applying section 671, at the time the donor ceases*
16 *to be so treated, the donor shall for purposes of this*
17 *chapter be considered as having received an amount*
18 *of income equal to the amount of any deduction he re-*
19 *ceived under this section for the contribution reduced*
20 *by the discounted value of all amounts of income*
21 *earned by the trust and taxable to him before the*
22 *time at which he ceases to be treated as the owner of*
23 *the interest. Such amounts of income shall be dis-*
24 *counted to the date of the contribution. The Secre-*

1 tary or his delegate shall prescribe such regulations
2 as may be necessary to carry out the purposes of this
3 subparagraph.

4 “(C) DENIAL OF DEDUCTION IN CASE OF
5 PAYMENTS BY CERTAIN TRUSTS.—In any case in
6 which a deduction is allowed under this section for
7 the value of an interest in property described in sub-
8 paragraph (B), transferred in trust, no deduc-
9 tion shall be allowed under this section to the grantor
10 or any other person for the amount of any contribu-
11 tion made by the trust with respect to such interest.

12 “(D) EXCEPTION.—This paragraph shall not
13 apply in a case in which the value of all interests in
14 property transferred in trust are deductible under
15 subsection (a).

16 “(3) DENIAL OF DEDUCTION IN CASE OF CERTAIN
17 CONTRIBUTIONS OF PARTIAL INTERESTS IN PROP-
18 erty.—

19 “(A) IN GENERAL.—In the case of a contribu-
20 tion (not made by a transfer in trust) of an interest
21 in property which consists of less than the taxpayer's
22 entire interest in such property, deduction shall be
23 allowed under this section only to the extent that the
24 value of the interest contributed would be allowable
25 as a deduction under this section if such interest had

1 *been transferred in trust. For purposes of this sub-*
2 *paragraph, a contribution by a taxpayer of the right*
3 *to use property shall be treated as a contribution of*
4 *less than the taxpayer's entire interest in such prop-*
5 *erty.*

6 *“(B) EXCEPTIONS.—Subparagraph (A) shall*
7 *not apply to a contribution of—*

8 *“(i) a remainder interest in real property,*
9 *or*

10 *“(ii) an undivided portion of an entire*
11 *— interest in property.*

12 *“(4) VALUATION OF REMAINDER INTEREST IN*
13 *REAL PROPERTY.—For purposes of this section, in deter-*
14 *mining the value of a remainder interest in real prop-*
15 *erty, depreciation (computed on the straight line*
16 *method) and depletion of such property shall be taken*
17 *into account.*

18 *“(5) REDUCTION FOR CERTAIN INTEREST.—If, in*
19 *connection with any charitable contribution, a liability*
20 *is assumed by the recipient or by any other person, or*
21 *if a charitable contribution is of property which is sub-*
22 *ject to a liability, then, to the extent necessary to avoid*
23 *the duplication of amounts, the amount taken into ac-*
24 *count for purposes of this section as the amount of the*
25 *charitable contribution—*

1 “(A) shall be reduced for interest (i) which has
2 been paid (or is to be paid) by the taxpayer, (ii)
3 which is attributable to the liability, and (iii) which
4 is attributable to any period after the making of the
5 contribution, and

6 “(B) in the case of a bond, shall be further
7 reduced for interest (i) which has been paid (or is
8 to be paid) by the taxpayer on indebtedness incurred
9 or continued to purchase or carry such bond, and
10 (ii) which is attributable to any period before the
11 making of the contribution.

12 The reduction pursuant to subparagraph (B) shall not
13 exceed the interest (including interest equivalent) on the
14 bond which is attributable to any period before the mak-
15 ing of the contribution and which is not (under the tax-
16 payer's method of accounting) includible in the gross
17 income of the taxpayer for any taxable year. For pur-
18 poses of this paragraph, the term ‘bond’ means any bond,
19 debenture, note, or certificate or other evidence of in-
20 debtedness.

21 “(6) PARTIAL REDUCTION OF UNLIMITED DEDUC-
22 TION.—

23 “(A) IN GENERAL.—If the limitations in sub-
24 sections (b)(1)(A) and (B) do not apply because
25 of the application of subsection (b)(1)(C), the

1 amount otherwise allowable as a deduction under
 2 subsection (a) shall be reduced by the amount by
 3 which the taxpayer's taxable income computed
 4 without regard to this subparagraph is less than the
 5 transitional income percentage (determined under
 6 subparagraph (C)) of the taxpayer's adjusted gross
 7 income. However, in no case shall a taxpayer's de-
 8 duction under this section be reduced below the
 9 amount allowable as a deduction under this section
 10 without the applicability of subsection (b)(1)(C).

11 “(B) TRANSITIONAL DEDUCTION PERCENT-
 12 AGE.—For purposes of applying subsection (b)(1)
 13 (C), the term ‘transitional deduction percentage’
 14 means—

15 “(i) in the case of a taxable year begin-
 16 ning before 1970, 90 percent, and

17 “(ii) in the case of a taxable year begin-
 18 ning in—

1970.....	80 percent
1971.....	74 percent
1972.....	68 percent
1973.....	62 percent
1974.....	56 percent.

19 “(C) TRANSITIONAL INCOME PERCENTAGE.—
 20 For purposes of applying subparagraph (A), the

1970-----	20 percent
1971-----	26 percent
1972-----	32 percent
1973-----	38 percent
1974-----	44 percent."

1 (2) CONFORMING AMENDMENTS.—

2 (A) Section 170(g) (relating to application of
3 unlimited charitable deduction) is amended by strik-
4 ing out "subsection (b)(5)" each place it appears
5 and inserting in lieu thereof "subsection (d)(1)",
6 and by striking subparagraph (B) of paragraph
7 (2).

8 (B) Section 545(b)(2) (relating to adjustments
9 to personal holding company taxable income) and
10 section 556(b)(2) (relating to adjustments to for-
11 eign personal holding company taxable income) are
12 each amended—

13 (i) by striking out "section 170(b)(1) (A)
14 and (B)" in the first sentence and inserting in
15 lieu thereof "section 170(b)(1) (A), (B), and
16 (D)";

17 (ii) by striking out "section 170(b) (2)
18 and (5)" in the first sentence and inserting in
19 lieu thereof "section 170(b)(2) and (d)(1)";

20 (iii) by striking out "'adjusted gross in-
21 come'" in the second sentence and inserting in
22 lieu thereof "'contribution base'"; and

1 (iv) by striking out "the first sentence of
2 section 170(b) (2) and (5)" in the second sen-
3 tence and inserting in lieu thereof "section 170
4 (b)(2) and (d)(1)".

5 (C) Section 809(c)(3) (relating to modifica-
6 tions of deductions for life insurance companies) is
7 amended—

8 (i) by striking out "the first sentence of" in
9 subparagraph (A); and

10 (ii) by striking out "section 170(b)(3)"
11 in subparagraph (B) and inserting in lieu
12 thereof "section 170(d)(2)(B)".

13 (b) CHARITABLE CONTRIBUTIONS BY ESTATES AND
14 TRUSTS.—Subsection (c) of section 642 (relating to deduc-
15 tion for amounts paid or permanently set aside for a chari-
16 table purpose) is amended to read as follows:

17 “(c) DEDUCTION FOR AMOUNTS PAID OR PERMA-
18 NENTLY SET ASIDE FOR A CHARITABLE PURPOSE.—

19 “(1) GENERAL RULE.—In the case of an estate or
20 trust (other than a trust meeting the specifications of
21 subpart B), there shall be allowed as a deduction in
22 computing its taxable income (in lieu of the deduction
23 allowed by section 170(a), relating to deduction for
24 charitable, etc., contributions and gifts) any amount of
25 the gross income, without limitation, which pursuant to

1 *apply) to the extent such amount exceeds the total of any*
2 *net capital gains (determined without regard to this sub-*
3 *section) of taxable years beginning after December 31,*
4 *1969."*

5 (c) CONFORMING AMENDMENT.—Section 1222(9)
6 *(defining net capital gain) is amended by striking out "In*
7 *the case of a corporation, the" and inserting in lieu thereof*
8 *"The".*

9 (d) EFFECTIVE DATE.—The amendments made by this
10 *section shall apply to taxable years beginning after December*
11 *31, 1969.*

12 **SEC. 514. LETTERS, MEMORANDUMS, ETC.**

13 (a) TREATMENT AS PROPERTY WHICH IS NOT A
14 CAPITAL ASSET.—Section 1221(3) *(relating to definition*
15 *of capital asset) is amended to read as follows:*

16 “(3) a copyright, a literary, musical, or artistic
17 composition, a letter or memorandum, or similar prop-
18 erty, held by—

19 “(A) a taxpayer whose personal efforts created
20 such property,

21 “(B) in the case of a letter, memorandum, or
22 similar property, a taxpayer for whom such prop-
23 erty was prepared or produced, or

24 “(C) a taxpayer in whose hands the basis of
25 such property is determined, for purposes of deter-

1 mining gain from a sale or exchange, in whole or
2 part by reference to the basis of such property in
3 the hands of a taxpayer described in subparagraph
4 (A) or (B);”.

5 (b) CONFORMING AMENDMENTS.—

6 (1) Section 341(e)(5)(A)(iv) (relating to defi-
7 nition of subsection (e) asset in the case of collapsible
8 corporations) is amended to read as follows:

9 “(iv) property (unless included under
10 clause (i), (ii), or (iii)) which consists of a
11 — copyright, a literary, musical, or artistic com-
12 position, a letter or memorandum, or similar
13 property, or any interest in any such property,
14 if the property was created in whole or in part
15 by the personal efforts of, or (in the case of a
16 letter, memorandum, or similar property) was
17 prepared or produced in whole or in part for,
18 any individual who owns more than 5 percent in
19 value of the stock of the corporation.”

20 (2) Section 1231(b)(1)(C) (relating to defini-
21 tion of property used in the trade or business) is amended
22 by inserting “, a letter or memorandum” before “, or
23 similar property”.

24 (c) EFFECTIVE DATE.—The amendments made by

1 this section shall apply to sales and other dispositions oc-
2 ccurring after December 31, 1968.

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February 1, 1974

(Transmitted February 22, 1974)

Dr. Laurence N. Woodworth
Chief of Staff
Joint Committee on Internal
Revenue Taxation
1011 Longworth House Office Bldg.
Washington, D. C.

Dear Larry:

As you requested, I am enclosing herewith copies of my memoranda of November 26, 1969 and December 8, 1969, to Peter Flanigan regarding the status at that time of provisions in the Tax Reform Act of 1969 relating to contributions of letters, memoranda and other property. These were taken from my personal chronological file, and I have received the approval of Ed Schmults, General Counsel of the Treasury Department, to my sending these to you.

Sincerely yours,

Edwin S. Cohen

Edwin S. Cohen

lse
Enclosure
Dictated but not read

NOV 26 1969

Memorandum to Mr. Peter Flanigan

Re: Tax Reform Act Provisions Regarding Contributions of Letters, Papers and Memoranda

Present Law. Contributions of collections of letters and papers are deductible to the extent of their fair market value. The deduction is limited to 30% of donor's "adjusted gross income" if the contribution is made to a college or university or charitable or educational organization receiving a substantial part of its support from government or from contributions from the general public; otherwise it is limited to 20%. (Internal Revenue Code §170 (b)).

While sales of "literary, musical or artistic compositions or similar property" by "a taxpayer whose personal efforts created such property" give rise to ordinary income rather than capital gain, collections of papers accumulated by a public official are probably not within that rule. There might be some doubt on that score as to file copies of letters written by the official himself.

The Tax Reform Act makes a number of changes in existing law:

1. Tangible personal property. In the House Bill deductions of "tangible personal property" (which included works of art and collections of papers of public officials) were limited to the "adjusted basis" of the property, which is normally zero in the case of collections of papers, unless the donor elects to treat the contribution as a sale of the property for a price equal to its market value. This provision would be effective as to contributions made after December 31, 1969.

The Senate Finance Committee bill now deletes this provision, but it would be on the conference agenda. Treasury has opposed this provision.

2. Contributions of property which if sold would produce ordinary income to the seller. Treasury recommended in April, and the House Bill provided, that if a person would have ordinary income on sale of an item of property, then if the item is contributed to an educational organization the deduction would be limited to the "adjusted basis" or the donor must treat the transaction as a sale for the value of the property and include the gain as ordinary income. As we recommended it, this would have applied to gifts of paintings by the artist, of wheat grown by a farmer, etc., but not to collections of papers by public officials. Again this provision in the House Bill would have applied to contributions made after December 31, 1969.

The House Bill, however, also amends the capital gains provisions to deny capital gains treatment on a sale of "a letter, memorandum, or similar property" by a taxpayer "whose personal efforts created such property" or "for whom such property was prepared or produced." The Committee Report says that letters and memorandums addressed to an individual are considered as prepared for him. The House Bill made this provision applicable to sales made after July 25, 1969.

In combination with the other new rule regarding contributions of property that would produce ordinary income on sale, this amendment in effect would deny a deduction for contributions of papers by a public official. However, it would not affect contributions of such property unless made after December 31, 1969.

The Senate Bill changes the effective date of both of these provisions with respect to contributions and sales of collections of papers applicable to those made after December 31, 1969. This change in effective date will be on the conference agenda. The Senate Bill left the effective date as to contributions of "ordinary income property" other than collections of papers at December 31, 1969, just as in the House Bill.

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If the effective dates of the House Bill regarding collections of papers should prevail the value of substantial contributions of papers made to a college or other publicly-supported institution before December 31, 1969 which exceed the donor's contribution ceiling for 1969 could be carried over and deducted in the years 1970-1974, subject to the ceiling in each year. However, this right to a carry-over to 1970-1974 would exist under present law only if the contribution is made to a college or other publicly-supported institutions. The Senate Bill would permit carry-overs in the case of contributions made to private "operating foundations," such as Colonial Williamsburg, Brookings, etc., but only as to contributions made after December 31, 1969. A private foundation operating a library could apparently be made to qualify as an "operating foundation" for this purpose. Hence if a carry-over from 1969 to 1970-1974 is desired for a contribution to a private "operating foundation" made in 1969, it would be necessary to move back the effective date of this change in law from December 31, 1969 to some earlier date.

Aside from the matter of effective date on contributions, the substantive provisions relating to contributions on sales of collections of papers are substantially the same in both bills, and hence probably could not be changed substantially in conference. While the Senate Bill consists of a single amendment in the form of a substitute for the House Bill, and there are some changes in the provisions that do not alter their basic characteristics, I doubt that a material substantive change could be made in conference, unless there is an amendment on the Senate floor.

Both bills increase from 30% to 50% of adjusted gross income the limit on deductions, but not with respect to appreciation in value of donated property. Thus the deduction from the appreciation element will still be limited to 30% if made to a college or publicly-supported institution, and 20% otherwise. Another change made in the Senate Bill will include private "operating foundations" in the list of organizations which qualify for the 30% ceiling, effective for contributions made after December 31, 1969.

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House Judiciary Committee staff

The Bill also limits the deduction for contributions of appreciated property donated to "private foundations" other than private "operating foundations." Hence if the bill were amended to strike out the provisions relating to collections of letters, this would eliminate the problem only if the contributions are made to an organization that is not a "private foundation" or if they are made to a private "operating foundation." As noted, a private foundation operating a library probably could be made to qualify as an "operating foundation."

Cutting through the ramifications of all these provisions, the following possibilities exist:

1. If the provision making sales of collections of papers ordinary income were stricken on the floor of the Senate and were not restored in conference, contributions of papers could continue to be deducted each year provided (a) the tangible personal property rule is not restored in conference, and (b) if the gift is made to a private foundation it qualifies as an "operating foundation." The contributions would be subject to a 20% ceiling in 1969 and a 30% ceiling thereafter. (Appreciation in property cannot be used as a deduction beyond the 30% ceiling; the increased ceiling of 50% cannot be used with respect to appreciation on property.)

2. If the effective date of the provisions relating to contributions of papers is changed back to that in the House Bill (from Dec. 31, 1966 to Dec. 31, 1969), then a contribution could be made in December, 1969 and deducted this year up to 30% of income if made to a publicly-supported institution and up to 20% if made to a private foundation. If the contribution were made to a publicly-supported institution the amount of the 1969 contribution exceeding the 30% ceiling could then be carried over and deducted in 1970-1974 up to a 30% ceiling in each of those years. But if

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- 4 -

The Bill also limits the deduction for contributions of appreciated property donated to "private foundations" other than private "operating foundations." Hence if the bill were amended to strike out the provisions relating to collections of letters, this would eliminate the problem only if the contributions are made to an organization that is not a "private foundation" or if they are made to a private "operating foundation." As noted, a private foundation operating a library probably could be made to qualify as an "operating foundation."

Cutting through the ramifications of all these provisions, the following possibilities exist:

1. If the provision making sales of collections of papers ordinary income were stricken on the floor of the Senate and were not restored in conference, contributions of papers could continue to be deducted each year provided (a) the tangible personal property rule is not restored in conference, and (b) if the gift is made to a private foundation it qualifies as an "operating foundation." The contributions would be subject to a 20% ceiling in 1969 and a 30% ceiling thereafter. (Appreciation in property cannot be used as a deduction beyond the 30% ceiling; the increased ceiling of 50% cannot be used with respect to appreciation on property.)

2. If the effective date of the provisions relating to contributions of papers is changed back to that in the House Bill (from Dec. 31, 1966 to Dec. 31, 1969), then a contribution could be made in December, 1969 and deducted this year up to 30% of income if made to a publicly-supported institution and up to 20% if made to a private foundation. If the contribution were made to a publicly-supported institution the amount of the 1969 contribution exceeding the 30% ceiling could then be carried over and deducted in 1970-1974 up to a 30% ceiling in each of those years. But if

the contribution were made in 1969 to a private operating foundation, the 1969 ceiling would be 20% and there would be no carry-over to 1970-1974 unless a further change is made in the effective date of the provision in the Senate Bill bringing private operating foundations into the group of donee organizations for which the higher ceilings and carry-overs are permitted on contributions. The latter provision as now drawn is effective only for contributions made after December 31, 1969.

(Lit.) E.S.C.

Edwin S. Cohen
Assistant Secretary

ESCohen:NEW:11/26/69

December 8, 1969

Memorandum to Mr. Peter Flanigan

Re: Tax Reform Bill - Contributions of Appreciated Property
which if Sold would Produce Ordinary Income

Present law permits a taxpayer who donates appreciated property to a charitable or educational organization to deduct the fair market value of the property without including in income the amount of the appreciation. The pending Tax Reform Bill provides that the amount of the taxpayer's deduction must be reduced by any gain which would not have been long-term capital gain if the property contributed had been sold by the taxpayer at its fair market value. (Bill § 201(a); p. 163, line 16 et seq.) The net effect would be that if the taxpayer has a cost of zero for the property no deduction will be permitted.

The new provision would apply, for example, to charitable gifts of paintings or sculptures by the artist (but not by a collector) since under the Code §1221(3) the artist would have ordinary income if he sold them; to gifts of a manuscript or a copyrighted writing by an author, for the same reason; to gifts of crops or livestock grown by a farmer, since under

- 2 -

farm accounting methods the farmer has no cost for crops or livestock. In addition, deductions would be eliminated for contributions of collections of papers and memoranda, because under another provision inserted in the bill by the Finance Committee on motion of Senator John Williams, sales of such collections will give rise to ordinary income rather than capital gain.

The Finance Committee report (p. 30) points out that under existing law a high-bracket person holding property that would give rise to ordinary income if sold can have more left after taxes if he donates the property than if he sells it. As an example, an artist in the 70 percent bracket selling his own drawing for \$1,000 would realize only \$300 after taxes; but if he donated it to a museum he would realize \$700 as a saving in his tax for the year.

Some museum representatives have pointed out that contributions by artists of their own works represent a significant portion of the additions to the museum collections each year, and the Reform Bill provisions will doubtless put an end to most of this source of contributions.

- 3 -

(None of the witnesses testifying before the Finance Committee specifically objected to this provision. Most of them objected to another provision in the House bill that would have limited to cost the deduction for gifts of any appreciated tangible personal property, such as works of art, whether donated by a collector who purchased it or by the artist. Some of them spoke only in support of donations by collectors who purchased the property but approved the provision relating to the artist; some spoke generally about all donations of works of art; but none spoke specifically on behalf of donations by artists. Some witnesses objected to all the changes made by the bill regarding deductions for charitable contributions.)

The Senate on Saturday, December 6, 1969 adopted an amendment by Senator Javits to create a commission to study and report generally on the income tax provisions relating to contributions. Thus it can be argued that the present rules on donations of ordinary income property, which have existed for so many years, should be retained until the commission reports.

It can be argued that the rule operates unfairly against authors, artists, public officials and others because a

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businessman owning stock of a corporation which is made successful by his personal efforts can deduct the value of his stock without reduction for appreciation. Nor does the rule apply to tangible property, such as land or buildings, improved by a person's own effort, nor to a patent donated by an inventor.

TAX REFORM ACT OF 1969

P.L. 91-172, see page 509

House Report (Ways and Means Committee) No. 91-413,
August 2, 1969 [To accompany H.R. 13270]

Senate Report (Finance Committee) No. 91-552,
November 21, 1969 [To accompany H.R. 13270]

[Conference Report No. 91-782,
December 22, 1969 [To accompany H.R. 13270]

Cong. Record Vol. 115 (1969)

DATES OF CONSIDERATION AND PASSAGE

[House August 7, December 22, 1969
Senate December 11, 22, 1969

The House Report, the Senate Report, and the Conference
Report are set out.

HOUSE REPORT NO. 91-413

The Committee on Ways and Means, to whom was referred the bill (H.R. 13270), to reform the income tax laws, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

I. SUMMARY

The Tax Reform Act of 1969 (H.R. 13270) represents a substantive and comprehensive reform of the income tax laws. Your committee is not aware of any prior tax reform bill of equal substantive scope.

From time to time, since the enactment of the present income tax, over 50 years ago, various tax incentives or preferences have been added to the internal revenue laws. Increasingly, in recent years taxpayers with substantial incomes have found ways of gaining tax advantages from provisions placed in the code primarily to aid some limited segment of the economy. In fact, in many cases they have found ways to pile one advantage on top of another. Your committee believes that this is an intolerable situation. It should not have been possible for 154 individuals with adjusted gross incomes of \$200,000 or more to pay no income tax. Ours is primarily a self-assessment system. If taxpayers are generally to pay their taxes on a voluntary basis they must feel that these taxes are fair. Moreover, only by sharing the tax burden on a fair basis is it possible to keep the tax burden at a level which is tolerable for all taxpayers.

LEGISLATIVE HISTORY

CONFERENCE REPORT NO. 91-782

STATEMENT OF THE MANAGERS ON THE PART OF THE HOUSE

The managers on the part of the House at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 13270) to reform the income tax laws submit the following in explanation of the effect of the action agreed upon by the conferees and recommended in the accompanying conference report:

The Senate struck out all of the House bill after the enacting clause and inserted a substitute amendment. The conference has agreed to a substitute for both the Senate amendment and the House bill. The following statement explains the principal differences between the effect of the House bill and the effect of the substitute agreed to in conference:

TITLE I—TAX EXEMPT ORGANIZATIONS¹

SUBTITLE A—PRIVATE FOUNDATIONS

1. Excise tax based on investment income (sec. 4940 of the code)

The House bill imposes a tax of 7.5 percent on the net investment income of a private foundation for each taxable year.

The Senate amendment substitutes for the House provision an annual audit-fee tax of one-tenth of 1 percent (one-fifth of 1 percent for 1970) of the noncharitable assets of a private foundation, but in no event less than \$100.

The conference substitute (sec. 101(b) of the substitute and sec. 4940 of the code) provides a tax of 4 percent of the net investment income of each foundation for the taxable year.

2. Prohibitions against self-dealing (sec. 4941 of the code)

Both the House bill and the Senate amendment impose taxes on the following acts of self-dealing:

(a) The sale, exchange, or leasing of properties between a private foundation and a disqualified person,

(b) The lending of money or other extension of credit between such persons,

(c) The furnishing of goods, services, or facilities between such persons,

(d) The payment of compensation by a private foundation to a disqualified person,

(e) The transfer to or use by, or for the benefit of, disqualified persons of the income or assets of a private foundation, and

(f) Agreement by a private foundation to make any payment of money or other property to a Government official (other than an agreement to employ such individual for certain periods after termination of Government service).

¹ All references to titles, subtitles, and sections of the bill, unless otherwise specified, will use the designation in the conference substitute.

LEGISLATIVE HISTORY

3. Charitable contributions of appreciated property (sec. 170(e) of the code)

The House bill in the case of charitable contributions of appreciated property takes this appreciation into account for tax purposes in five types of situations. These are as follows:

(1) Appreciation is taken into account in the case of gifts to a private foundation other than an operating foundation and other than a private foundation which within 1 year distributes an amount equivalent to the total amount of gifts of appreciated property;

(2) Appreciation is taken into account in the case of property (such as inventory or works of art created by the donor) which would give rise to ordinary income if sold;

(3) Appreciation is taken into account in the case of gifts of tangible personal property (such as paintings, art objects, and books not produced by the donor) which would result in capital gain if the property were sold.

(4) Appreciation is taken into account in the case of gifts of future interests in property (such as a remainder interest in trust) which would result in capital gain if the property were sold.

(5) The cost or other basis of property in the case of a so-called bargain sale to charity is allocated between the portion of the property which is "sold" to the charity and the portion which is "given" to the charity on the basis of the fair market value of each portion.

The Senate amendment deleted categories (3), (4), and (5) listed above.

The conference substitute (sec. 201(a) of the substitute and sec. 170(e) of the code) follows the House bill except that in the case of category (3), listed above, it does not take appreciation in value into account in the case of gifts of tangible personal property (which would result in capital gain if the property were sold) where the use of the property is related to the exempt function of the donee. In addition, the conference substitute does not take appreciation into account in the case of category (4) referred to above relating to gifts of future interests in property.

The House bill provides that the amendments relating to charitable contributions generally apply to contributions paid after December 31, 1969.

The Senate amendment modifies this effective date to provide that in the case of a gift of a letter or memorandum or similar property, the charitable contribution amendments are to apply to contributions paid after December 31, 1968.

The conference substitute (sec. 201(g) (1) (B) of the substitute) follows the Senate amendment except that it changes the date to July 25, 1969.

4. Two-year charitable trust (sec. 673(b) of the code)

No substantive change is made by the Senate amendment in the House bill.

5. Gifts of the use of property (sec. 170(f) (3) of the code)

The House bill provides that a charitable deduction is not to be allowed for contributions to charity of less than the taxpayer's entire interest in property.

LEGISLATIVE HISTORY

The conference substitute (sec. 511 of the substitute and sec. 1201 of the code) follows the Senate amendment with the following modifications:

(1) In the case of noncorporate taxpayers, it is provided that \$50,000 of long-term capital gains continue to qualify for the alternative capital gains rate without regard to the amount of the taxpayer's tax preferences.

(2) In the case of noncorporate taxpayers the rate of tax on capital gains not eligible for the 25-percent alternative rate is increased to 29½ percent for 1970, to 32½ percent for 1971, and then to 35 percent for 1972.

(3) The continuation of the 25-percent alternative tax rate in the case of payments received pursuant to certain binding contracts and installment sales (described in Nos. 3 and 4 above) is limited to amounts received before 1975.

2. Capital losses of corporations (sec. 1212 of the code)

The House bill does not contain a comparable provision.

The Senate amendment provides a 3-year capital loss carryback for corporations which is in addition to the 5-year capital loss carryforward presently allowed corporations. The 3-year carryback is not available for foreign expropriation capital losses for which a special 10-year carryforward is presently available or for losses incurred by, or to be used by, a subchapter S corporation. The "quickie" refund procedure presently available in the case of net operating loss carrybacks (under which the refund is made after only a preliminary check by the Internal Revenue Service on the appropriateness of the refund) is made available in the case of the 3-year capital loss carryback. This provision applies to capital losses sustained in taxable years beginning after December 31, 1969.

The conference substitute (sec. 512 of the substitute and sec. 1212 of the code) follows the Senate amendment.

3. Capital losses of individuals (sec. 1211 of the code)

The House bill provides that only 50 percent of an individual's long-term capital losses may be offset against his ordinary income up to the \$1,000 limit. Thus \$2,000 of losses are required to obtain the full \$1,000 offset. (Short-term capital losses, however, continue to be fully deductible within the \$1,000 limitation.) In addition, the deduction of capital losses against ordinary income for married persons filing separate returns is limited to \$500 for each spouse (rather than the \$1,000 presently allowed).

The Senate amendment retains the treatment provided by the House bill except that it is made applicable for taxable years beginning after December 31, 1969 (rather than July 25, 1969, as under the House bill).

The conference substitute (sec. 513 of the substitute and sec. 1211(b) of the code) follows the Senate amendment.

4. Letters, memorandums, etc. (secs. 1221(3) and 1231(b) (1) (c) of the code)

The House bill provides that letters, memorandums, and similar property (or collections thereof) are not to be treated as capital assets if they are held by the taxpayer whose personal efforts created the property or for

TAX REFORM ACT OF 1969

Conference Report

whom the property was prepared or produced (or by a person who received the property as a gift from the person who created it). Gains from the sale of these letters and memorandums, accordingly, are to be taxed as ordinary income, rather than as capital gains.

The Senate amendment modifies this provision of the House bill to make it applicable to sales or other disposition of these letters, memorandums, etc., occurring after December 31, 1968 (rather than July 25, 1969, as provided by the House bill).

The conference substitute (sec. 514 of the substitute and secs. 1221(3) and 1231(b) (1) (c) of the code) follows the House bill.

5. Total distribution from qualified pension, etc., plans (secs. 402(a), 403(a) (2), and 72(n) of the code)

The House bill limits the extent to which capital gains treatment is to be allowed for lump-sum distributions from qualified employee trusts (qualified pension, profit sharing, stock bonus, and annuity plans). Amounts attributable to employer contributions for plan years beginning after 1969 are treated as ordinary income. All other amounts received in the lump-sum distribution continue to be accorded capital gains treatment if received in one taxable year upon separation from employment or death. A special 5-year "forward" averaging is provided for the amounts to be treated as ordinary income. The tax on this amount may be recomputed at the end of 5 years by including one-fifth of the ordinary income amount in gross income for the 5 taxable years. If the recomputed tax determined in this manner results in a lower tax than previously paid, the taxpayer would be entitled to a refund.

The Senate amendment deletes this provision from the bill.

The conference substitute (sec. 515 of the substitute and secs. 402(a), 403(a) (2), and 72(n) of the code) follows the House provision whereby employer contributions to qualified pension, profit sharing, stock bonus, and annuity plans for plan years beginning after 1969 are to be treated as ordinary income when received in a lump-sum distribution. The amounts to be treated as ordinary income, however, are to be eligible for a special 7-year "forward" averaging. In addition, the amounts received by the employee as compensation (other than deferred compensation) during the taxable year the lump-sum distribution is received and the capital gains portion of the lump-sum distribution are not to be taken into account for the calculation of the tax on the ordinary income portion of the distribution under the 7-year special averaging procedure. There is no recomputation or refund procedure.

6. Sales of life estates, etc. (sec. 1001 of the code)

The House bill provides that the entire amount received on the sale or other disposition of a life (or term of years) interest in property or an income interest in trust, if such interest was acquired by gift, bequest, inheritance, or a transfer in trust, is to be taxable, rather than only the excess of the amount received over the seller's basis for his interest. The provision does not, however, change present law in the situation where there is a sale or other disposition of a life (or term of years) interest in property or an income interest in trust where such sale is a part of a single transac-

SEC. 642. (a) Amounts, as determined by the Secretary of Defense and approved by the Director of the Bureau of the Budget, of any appropriations of the Department of Defense available for procurement (except Shipbuilding and Conversion, Navy) which (1) will remain unobligated as of the close of any fiscal year for which estimates are submitted and (2) which have been available for obligation for three or more fiscal years, shall be proposed for rescission.

Procurement
funds, rescission.

(b) Amounts, as determined by the Secretary of Defense and approved by the Director of the Bureau of the Budget, of any appropriations of the Department of Defense available for Shipbuilding which (1) will remain unobligated as of the close of any fiscal year for which estimates are submitted and (2) which have been available for obligation for five or more fiscal years, shall be proposed for rescission.

Shipbuilding
funds, rescission.

(c) Amounts, as determined by the Secretary of Defense and approved by the Director of the Bureau of the Budget, of any appropriations of the Department of Defense available for research, development, test and evaluation (except Emergency Fund, Defense) which (1) will remain unobligated as of the close of any fiscal year for which estimates are submitted and (2) which have been available for obligation for two or more fiscal years, shall be proposed for rescission.

Research and
development
funds, rescission.

SEC. 643. In line with the expressed intention of the President of the United States, none of the funds appropriated by this Act shall be used to finance the introduction of American ground combat troops into Laos or Thailand.

Laos or Thai-
land.
Introduction of
combat troops,
prohibition.
Short title.

This Act may be cited as the "Department of Defense Appropriation Act, 1970."

Approved December 29, 1969.

Public Law 91-172

AN ACT
To reform the income tax laws.

December 30, 1969
[H. R. 13270]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Tax Reform Act
of 1969.

SECTION 1. SHORT TITLE, ETC.

(a) SHORT TITLE.—This Act may be cited as the "Tax Reform Act of 1969".

(b) TABLE OF CONTENTS.—

(g) **EFFECTIVE DATES.**—The amendments made by this section (other than by subsections (b) (3) and (e)) shall apply to taxable years beginning after December 31, 1969. The amendments made by subsection (b) (3) shall apply to taxable years beginning after December 31, 1970. The amendments made by subsection (e) shall apply with respect to transfers of property after December 31, 1969. Where an organization makes a bargain purchase of property before October 9, 1969, which is subject to a mortgage which was placed on the property more than 5 years before the purchase, and the organization paid the seller a total amount no greater than the amount of the seller's cost (including attorneys' fees) directly related to the transfer of such property to the organization (but in any event no more than 10 percent of the value of the seller's equity in the property), the indebtedness secured by such mortgage shall not be treated, notwithstanding the amendments made by subsection (d) (1), as acquisition indebtedness for purposes of section 514(c) (1) of the Internal Revenue Code of 1954 during a period of 10 years following the date of the transaction.

Ante, p. 545

TITLE II—INDIVIDUAL DEDUCTIONS

Subtitle A—Charitable Contributions

SEC. 201. CHARITABLE CONTRIBUTIONS.

(a) LIMITATIONS AND SPECIAL RULES.—

(1) **IN GENERAL.**—Section 170 (relating to charitable, etc., contributions and gifts) is amended—

(A) by redesignating subsections (h) and (i) as (i) and (j), respectively, and by redesignating subsection (d) as (h), and

(B) by striking out subsections (a), (b), (c), (e), and (f) and inserting in lieu thereof the following:

“(a) ALLOWANCE OF DEDUCTION.—

“(1) **GENERAL RULE.**—There shall be allowed as a deduction any charitable contribution (as defined in subsection (c)) payment of which is made within the taxable year. A charitable contribution shall be allowable as a deduction only if verified under regulations prescribed by the Secretary or his delegate.

“(2) **CORPORATIONS ON ACCRUAL BASIS.**—In the case of a corporation reporting its taxable income on the accrual basis, if—

“(A) the board of directors authorizes a charitable contribution during any taxable year, and

“(B) payment of such contribution is made after the close of such taxable year and on or before the 15th day of the third month following the close of such taxable year, then the taxpayer may elect to treat such contribution as paid during such taxable year. The election may be made only at the time of the filing of the return for such taxable year, and shall be signified in such manner as the Secretary or his delegate shall by regulations prescribe.

“(3) **FUTURE INTERESTS IN TANGIBLE PERSONAL PROPERTY.**—For purposes of this section, payment of a charitable contribution which consists of a future interest in tangible personal property shall be treated as made only when all intervening interests in, and rights to the actual possession or enjoyment of, the property have expired or are held by persons other than the taxpayer or those standing in a relationship to the taxpayer described in section

68A Stat. 58.
26 USC 170.

68A Stat. 78
26 USC 267.

267(b). For purposes of the preceding sentence, a fixture which is intended to be severed from the real property shall be treated as tangible personal property.

“(b) PERCENTAGE LIMITATIONS.—

“(1) INDIVIDUALS.—In the case of an individual, the deduction provided in subsection (a) shall be limited as provided in the succeeding subparagraphs.

“(A) GENERAL RULE.—Any charitable contribution to—

“(i) a church or a convention or association of churches,

“(ii) an educational organization which normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on,

“(iii) an organization the principal purpose or functions of which are the providing of medical or hospital care or medical education or medical research, if the organization is a hospital, or if the organization is a medical research organization directly engaged in the continuous active conduct of medical research in conjunction with a hospital, and during the calendar year in which the contribution is made such organization is committed to spend such contributions for such research before January 1 of the fifth calendar year which begins after the date such contribution is made,

“(iv) an organization which normally receives a substantial part of its support (exclusive of income received in the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 501(a)) from the United States or any State or political subdivision thereof or from direct or indirect contributions from the general public, and which is organized and operated exclusively to receive, hold, invest, and administer property and to make expenditures to or for the benefit of a college or university which is an organization referred to in clause (ii) of this subparagraph and which is an agency or instrumentality of a State or political subdivision thereof, or which is owned or operated by a State or political subdivision thereof or by an agency or instrumentality of one or more States or political subdivisions,

“(v) a governmental unit referred to in subsection (c)(1),

“(vi) an organization referred to in subsection (c)(2) which normally receives a substantial part of its support (exclusive of income received in the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 501(a)) from a governmental unit referred to in subsection (c)(1) or from direct or indirect contributions from the general public,

“(vii) a private foundation described in subparagraph (E), or

“(viii) an organization described in section 509(a) (2) or (3), shall be allowed to the extent that the aggregate of such contributions does not exceed 50 percent of the taxpayer’s contribution base for the taxable year.

Ante, p. 496

“(B) OTHER CONTRIBUTIONS.—Any charitable contribution other than a charitable contribution to which subparagraph (A) applies shall be allowed to the extent that the aggregate of such contributions does not exceed the lesser of—

“(i) 20 percent of the taxpayer’s contribution base for the taxable year, or

“(ii) the excess of 50 percent of the taxpayer’s contribution base for the taxable year over the amount of charitable contributions allowable under subparagraph (A) (determined without regard to subparagraph (D)).

“(C) UNLIMITED DEDUCTION FOR CERTAIN INDIVIDUALS.—Subject to the provisions of subsections (f) (6) and (g), the limitations in subparagraphs (A), (B), and (D), and the provisions of subsection (e) (1) (B), shall not apply, in the case of an individual for a taxable year beginning before January 1, 1975, if in such taxable year and in 8 of the 10 preceding taxable years, the amount of the charitable contributions, plus the amount of income tax (determined without regard to chapter 2, relating to tax on self-employment income) paid during such year in respect of such year or preceding taxable years, exceeds the transitional deduction percentage (determined under subsection (f) (6)) of the taxpayer’s taxable income for such year, computed without regard to—

68A Stat. 353;
81 Stat. 835.
26 USC 1401

“(i) this section,

“(ii) section 151 (allowance of deductions for personal exemption), and

Post, pp. 675.
676.

“(iii) any net operating loss carryback to the taxable year under section 172.

Post, p. 619.

In lieu of the amount of income tax paid during any such year, there may be substituted for that year the amount of income tax paid in respect of such year, provided that any amount so included in the year in respect of which payment was made shall not be included in any other year.

“(D) SPECIAL LIMITATION WITH RESPECT TO CONTRIBUTIONS OF CERTAIN CAPITAL GAIN PROPERTY.—

“(i) In the case of charitable contributions of capital gain property to which subsection (e) (1) (B) does not apply, the total amount of contributions of such property which may be taken into account under subsection (a) for any taxable year shall not exceed 30 percent of the taxpayer’s contribution base for such year. For purposes of this subsection, contributions of capital gain property to which this paragraph applies shall be taken into account after all other charitable contributions.

“(ii) If charitable contributions described in subparagraph (A) of capital gain property to which clause (i) applies exceeds 30 percent of the taxpayer’s contribution base for any taxable year, such excess shall be treated, in a manner consistent with the rules of subsection (d) (1), as a charitable contribution of capital gain property to which clause (i) applies in each of the 5 succeeding taxable years in order of time.

“(iii) At the election of the taxpayer (made at such time and in such manner as the Secretary or his delegate prescribes by regulations), subsection (e) (1) shall apply to all contributions of capital gain property (to which subsection (e) (1) (B) does not otherwise apply) made by the taxpayer during the taxable year. If such an election is made, clauses (i) and (ii) shall not apply to contributions of capital gain property made during the taxable year, and, in applying subsection (d) (1) for such taxable year with respect to contributions of capital gain property made in any prior contribution year for which an election was not made under this clause, such contributions shall be reduced as if subsection (e) (1) had applied to such contributions in the year in which made.

“(iv) For purposes of this subparagraph, the term ‘capital gain property’ means, with respect to any contribution, any capital asset the sale of which at its fair market value at the time of the contribution would have resulted in gain which would have been long-term capital gain. For purposes of the preceding sentence, any property which is property used in the trade or business (as defined in section 1231(b)) shall be treated as a capital asset.

“(E) CERTAIN PRIVATE FOUNDATIONS.—The private foundations referred to in subparagraph (A) (vii) and subsection (e) (1) (B) are—

“(i) a private operating foundation (as defined in section 4942(j) (3)),

“(ii) any other private foundation (as defined in section 509(a)) which, not later than the 15th day of the third month after the close of the foundation’s taxable year in which contributions are received, makes qualifying distributions (as defined in section 4942(g), without regard to paragraph (3) thereof), which are treated, after the application of section 4942(g) (3), as distributions out of corpus (in accordance with section 4942(h)) in an amount equal to 100 percent of such contributions, and with respect to which the taxpayer obtains adequate records or other sufficient evidence from the foundation showing that the foundation made such qualifying distributions, and

“(iii) a private foundation all of the contributions to which are pooled in a common fund and which would be described in section 509(a) (3) but for the right of any substantial contributor (hereafter in this clause called ‘donor’) or his spouse to designate annually the recipients, from among organizations described in paragraph (1) of section 509(a), of the income attributable to the donor’s contribution to the fund and to direct (by deed or by will) the payment, to an organization described in such paragraph (1), of the corpus in the common fund attributable to the donor’s contribution; but this clause shall apply only if all of the income of the common fund is required to be (and is) distributed to one or more organizations, described in such paragraph (1) not later than the 15th day of the third month after the close of the taxable year in which the income is realized by the fund and only if

68A Stat. 325.
26 USC 1231.

Ante, p. 502.

Ante, p. 496.

all of the corpus attributable to any donor's contribution to the fund is required to be (and is) distributed to one or more of such organizations not later than one year after his death or after the death of his surviving spouse if she has the right to designate the recipients of such corpus.

“(F) CONTRIBUTION BASE DEFINED.—For purposes of this section, the term ‘contribution base’ means adjusted gross income (computed without regard to any net operating loss carryback to the taxable year under section 172).

68A Stat. 63;
76 Stat. 889.
26 USC 172.

“(2) CORPORATIONS.—In the case of a corporation, the total deductions under subsection (a) for any taxable year shall not exceed 5 percent of the taxpayer's taxable income computed without regard to—

“(A) this section,

“(B) part VIII (except section 248),

26 USC 241-248.

“(C) any net operating loss carryback to the taxable year under section 172,

“(D) section 922 (special deduction for Western Hemisphere trade corporations), and

68A Stat. 291.

“(E) any capital loss carryback to the taxable year under section 1212(a)(1).

Post, p. 638.

“(c) CHARITABLE CONTRIBUTION DEFINED.—For purposes of this section, the term ‘charitable contribution’ means a contribution or gift to or for the use of—

“(1) A State, a possession of the United States, or any political subdivision of any of the foregoing, or the United States or the District of Columbia, but only if the contribution or gift is made for exclusively public purposes.

“(2) A corporation, trust, or community chest, fund, or foundation—

“(A) created or organized in the United States or in any possession thereof, or under the law of the United States, any State, the District of Columbia, or any possession of the United States;

“(B) organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes or for the prevention of cruelty to children or animals;

“(C) no part of the net earnings of which inures to the benefit of any private shareholder or individual; and

“(D) no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office.

A contribution or gift by a corporation to a trust, chest, fund, or foundation shall be deductible by reason of this paragraph only if it is to be used within the United States or any of its possessions exclusively for purposes specified in subparagraph (B).

“(3) A post or organization of war veterans, or an auxiliary unit or society of, or trust or foundation for, any such post or organization—

“(A) organized in the United States or any of its possessions, and

“(B) no part of the net earnings of which inures to the benefit of any private shareholder or individual.

“(4) In the case of a contribution or gift by an individual, a domestic fraternal society, order, or association, operating under the lodge system, but only if such contribution or gift is to be used exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals.

“(5) A cemetery company owned and operated exclusively for the benefit of its members, or any corporation chartered solely for burial purposes as a cemetery corporation and not permitted by its charter to engage in any business not necessarily incident to that purpose, if such company or corporation is not operated for profit and no part of the net earnings of such company or corporation inures to the benefit of any private shareholder or individual.

For purposes of this section, the term ‘charitable contribution’ also means an amount treated under subsection (h) as paid for the use of an organization described in paragraph (2), (3), or (4).

“(d) CARRYOVERS OF EXCESS CONTRIBUTIONS.—

“(1) INDIVIDUALS.—

“(A) IN GENERAL.—In the case of an individual, if the amount of charitable contributions described in subsection (b)(1)(A) payment of which is made within a taxable year (hereinafter in this paragraph referred to as the ‘contribution year’) exceeds 50 percent (30 percent, in the case of a contribution year beginning before January 1, 1970) of the taxpayer’s contribution base for such year, such excess shall be treated as a charitable contribution described in subsection (b)(1)(A) paid in each of the 5 succeeding taxable years in order of time, but, with respect to any such succeeding taxable year, only to the extent of the lesser of the two following amounts:

“(i) the amount by which 50 percent of the taxpayer’s contribution base for such succeeding taxable year exceeds the sum of the charitable contributions described in subsection (b)(1)(A) payment of which is made by the taxpayer within such succeeding taxable year (determined without regard to this subparagraph) and the charitable contributions described in subsection (b)(1)(A) payment of which was made in taxable years before the contribution year which are treated under this subparagraph as having been paid in such succeeding taxable year; or

“(ii) in the case of the first succeeding taxable year, the amount of such excess, and in the case of the second, third, fourth, or fifth succeeding taxable year, the portion of such excess not treated under this subparagraph as a charitable contribution described in subsection (b)(1)(A) paid in any taxable year intervening between the contribution year and such succeeding taxable year.

“(B) SPECIAL RULE FOR NET OPERATING LOSS CARRYOVERS.—

In applying subparagraph (A), the excess determined under subparagraph (A) for the contribution year shall be reduced to the extent that such excess reduces taxable income (as computed for purposes of the second sentence of section 172(b)(2)) and increases the net operating loss deduction for a taxable year succeeding the contribution year.

“(2) CORPORATIONS.—

“(A) IN GENERAL.—Any contribution made by a corporation in a taxable year (hereinafter in this paragraph referred

to as the 'contribution year') in excess of the amount deductible for such year under subsection (b) (2) shall be deductible for each of the 5 succeeding taxable years in order of time, but only to the extent of the lesser of the two following amounts: (i) the excess of the maximum amount deductible for such succeeding taxable year under subsection (b) (2) over the sum of the contributions made in such year plus the aggregate of the excess contributions which were made in taxable years before the contribution year and which are deductible under this subparagraph for such succeeding taxable year; or (ii) in the case of the first succeeding taxable year, the amount of such excess contribution, and in the case of the second, third, fourth, or fifth succeeding taxable year, the portion of such excess contribution not deductible under this subparagraph for any taxable year intervening between the contribution year and such succeeding taxable year.

"(B) SPECIAL RULE FOR NET OPERATING LOSS CARRYOVERS.—For purposes of subparagraph (A), the excess of—

"(i) the contributions made by a corporation in a taxable year to which this section applies, over

"(ii) the amount deductible in such year under the limitation in subsection (b) (2), shall be reduced to the extent that such excess reduces taxable income (as computed for purposes of the second sentence of section 172 (b) (2)) and increases a net operating loss carry-over under section 172 to a succeeding taxable year.

76 Stat. 889.
26 USC 172.

"(e) CERTAIN CONTRIBUTIONS OF ORDINARY INCOME AND CAPITAL GAIN PROPERTY.—

"(1) GENERAL RULE.—The amount of any charitable contribution of property otherwise taken into account under this section shall be reduced by the sum of—

"(A) the amount of gain which would not have been long-term capital gain if the property contributed had been sold by the taxpayer at its fair market value (determined at the time of such contribution), and

"(B) in the case of a charitable contribution—

"(i) of tangible personal property, if the use by the donee is unrelated to the purpose or function constituting the basis for its exemption under section 501 (or, in the case of a governmental unit, to any purpose or function described in subsection (c)), or

"(ii) to or for the use of a private foundation (as defined in section 509 (a)), other than a private foundation described in subsection (b) (1) (E),

Ante, p. 496.

50 percent (62½ percent, in the case of a corporation) of the amount of gain which would have been long-term capital gain if the property contributed had been sold by the taxpayer at its fair market value (determined at the time of such contribution).

For purposes of applying this paragraph (other than in the case of gain to which section 617 (d) (1), 1245 (a), 1250 (a), 1251 (c), or 1252 (a) applies), property which is property used in the trade or business (as defined in section 1231 (b)) shall be treated as a capital asset.

80 Stat. 759.
Post, pp. 571,
652, 566, 572.
68A Stat. 325.

"(2) ALLOCATION OF BASIS.—For purposes of paragraph (1), in the case of a charitable contribution of less than the taxpayer's entire interest in the property contributed, the taxpayer's adjusted

basis in such property shall be allocated between the interest contributed and any interest not contributed in accordance with regulations prescribed by the Secretary or his delegate.

“(f) DISALLOWANCE OF DEDUCTION IN CERTAIN CASES AND SPECIAL RULES.—

“(1) IN GENERAL.—No deduction shall be allowed under this section for a contribution to or for the use of an organization or trust described in section 508(d) or 4948(c)(4) subject to the conditions specified in such sections.

“(2) CONTRIBUTIONS OF PROPERTY PLACED IN TRUST.—

“(A) REMAINDER INTEREST.—In the case of property transferred in trust, no deduction shall be allowed under this section for the value of a contribution of a remainder interest unless the trust is a charitable remainder annuity trust or a charitable remainder unitrust (described in section 664), or a chartered income fund (described in section 642(c)(5)).

“(B) INCOME INTERESTS, ETC.—No deduction shall be allowed under this section for the value of any interest in property (other than a remainder interest) transferred in trust unless the interest is in the form of a guaranteed annuity or the trust instrument specifies that the interest is a fixed percentage distributed yearly of the fair market value of the trust property (to be determined yearly) and the grantor is treated as the owner of such interest for purposes of applying section 671. If the donor ceases to be treated as the owner of such an interest for purposes of applying section 671, at the time the donor ceases to be so treated, the donor shall for purposes of this chapter be considered as having received an amount of income equal to the amount of any deduction he received under this section for the contribution reduced by the discounted value of all amounts of income earned by the trust and taxable to him before the time at which he ceases to be treated as the owner of the interest. Such amounts of income shall be discounted to the date of the contribution. The Secretary or his delegate shall prescribe such regulations as may be necessary to carry out the purposes of this subparagraph.

“(C) DENIAL OF DEDUCTION IN CASE OF PAYMENTS BY CERTAIN TRUSTS.—In any case in which a deduction is allowed under this section for the value of an interest in property described in subparagraph (B), transferred in trust, no deduction shall be allowed under this section to the grantor or any other person for the amount of any contribution made by the trust with respect to such interest.

“(D) EXCEPTION.—This paragraph shall not apply in a case in which the value of all interests in property transferred in trust are deductible under subsection (a).

“(3) DENIAL OF DEDUCTION IN CASE OF CERTAIN CONTRIBUTIONS OF PARTIAL INTERESTS IN PROPERTY.—

“(A) IN GENERAL.—In the case of a contribution (not made by a transfer in trust) of an interest in property which consists of less than the taxpayer's entire interest in such property, a deduction shall be allowed under this section only to the extent that the value of the interest contributed would be allowable as a deduction under this section if such interest had been transferred in trust. For purposes of this subparagraph, a contribution by a taxpayer of the right to use property shall be treated as a contribution of less than the taxpayer's entire interest in such property.

Ante, pp. 494,
518.

Post, p. 562.

Post, p. 558.

68A Stat. 226.
26 USC 671.

“(B) EXCEPTIONS.—Subparagraph (A) shall not apply to a contribution of—

“(i) a remainder interest in a personal residence or farm, or

“(ii) an undivided portion of the taxpayer’s entire interest in property.

“(4) VALUATION OF REMAINDER INTEREST IN REAL PROPERTY.—

For purposes of this section, in determining the value of a remainder interest in real property, depreciation (computed on the straight line method) and depletion of such property shall be taken into account, and such value shall be discounted at a rate of 6 percent per annum, except that the Secretary or his delegate may prescribe a different rate.

“(5) REDUCTION FOR CERTAIN INTEREST.—If, in connection with any charitable contribution, a liability is assumed by the recipient or by any other person, or if a charitable contribution is of property which is subject to a liability, then, to the extent necessary to avoid the duplication of amounts, the amount taken into account for purposes of this section as the amount of the charitable contribution—

“(A) shall be reduced for interest (i) which has been paid (or is to be paid) by the taxpayer, (ii) which is attributable to the liability, and (iii) which is attributable to any period after the making of the contribution, and

“(B) in the case of a bond, shall be further reduced for interest (i) which has been paid (or is to be paid) by the taxpayer on indebtedness incurred or continued to purchase or carry such bond, and (ii) which is attributable to any period before the making of the contribution.

The reduction pursuant to subparagraph (B) shall not exceed the interest (including interest equivalent) on the bond which is attributable to any period before the making of the contribution and which is not (under the taxpayer’s method of accounting) includible in the gross income of the taxpayer for any taxable year. For purposes of this paragraph, the term ‘bond’ means any bond, debenture, note, or certificate or other evidence of indebtedness.

“(6) PARTIAL REDUCTION OF UNLIMITED DEDUCTION.—

“(A) IN GENERAL.—If the limitations in subsections (b) (1) (A) and (B) do not apply because of the application of subsection (b) (1) (C), the amount otherwise allowable as a deduction under subsection (a) shall be reduced by the amount by which the taxpayer’s taxable income computed without regard to this subparagraph is less than the transitional income percentage (determined under subparagraph (C)) of the taxpayer’s adjusted gross income. However, in no case shall a taxpayer’s deduction under this section be reduced below the amount allowable as a deduction under this section without the applicability of subsection (b) (1) (C).

“(B) TRANSITIONAL DEDUCTION PERCENTAGE.—For purposes of applying subsection (b) (1) (C), the term ‘transitional deduction percentage’ means—

“(i) in the case of a taxable year beginning before 1970, 90 percent, and

“(ii) in the case of a taxable year beginning in—

1970.....	80 percent
1971.....	74 percent
1972.....	68 percent
1973.....	62 percent
1974.....	56 percent.

“(C) TRANSITIONAL INCOME PERCENTAGE.—For purposes of applying subparagraph (A), the term ‘transitional income percentage’ means, in the case of a taxable year beginning in—

1970.....	20 percent
1971.....	26 percent
1972.....	32 percent
1973.....	38 percent
1974.....	44 percent.”

(2) CONFORMING AMENDMENTS.—

(A) Section 170(g) (relating to application of unlimited charitable deduction) is amended by striking out “subsection (b) (5)” each place it appears and inserting in lieu thereof “subsection (d) (1)”, and by striking subparagraph (B) of paragraph (2).

(B) Section 545(b) (2) (relating to adjustments to personal holding company taxable income) and section 556 (b) (2) (relating to adjustments to foreign personal holding company taxable income) are each amended—

(i) by striking out “section 170(b) (1) (A) and (B)” in the first sentence and inserting in lieu thereof “section 170(b) (1) (A), (B), and (D)”;

(ii) by striking out “section 170(b) (2) and (5)” in the first sentence and inserting in lieu thereof “section 170(b) (2) and (d) (1)”;

(iii) by striking out “‘adjusted gross income’” in the second sentence and inserting in lieu thereof “‘contribution base’”; and

(iv) by striking out “the first sentence of section 170 (b) (2) and (5)” in the second sentence and inserting in lieu thereof “section 170(b) (2) and (d) (1)”.

(C) Section 809(e) (3) (relating to modifications of deductions for life insurance companies) is amended—

(i) by striking out “the first sentence of” in subparagraph (A); and

(ii) by striking out “section 170(b) (3)” in subparagraph (B) and inserting in lieu thereof “section 170 (d) (2) (B)”.

(b) CHARITABLE CONTRIBUTIONS BY ESTATES AND TRUSTS.—Subsection (c) of section 642 (relating to deduction for amounts paid or permanently set aside for a charitable purpose) is amended to read as follows:

“(c) DEDUCTION FOR AMOUNTS PAID OR PERMANENTLY SET ASIDE FOR A CHARITABLE PURPOSE.—

“(1) GENERAL RULE.—In the case of an estate or trust (other than a trust meeting the specifications of subpart B), there shall be allowed as a deduction in computing its taxable income (in lieu of the deduction allowed by section 170(a), relating to deduction for charitable, etc., contributions and gifts) any amount of the gross income, without limitation, which pursuant to the terms of the governing instrument is, during the taxable year, paid for a purpose specified in section 170(c) (determined without regard to section 170(c) (2) (A)). If a charitable contribution is paid after the close of such taxable year and on or before the last day of the year following the close of such taxable year, then the trustee or administrator may elect to treat such contribution as paid during such taxable year. The election shall be made at such time and in such manner as the Secretary or his delegate prescribes by regulations.

"(2) AMOUNTS PERMANENTLY SET ASIDE.—In the case of an estate, and in the case of a trust (other than a trust meeting the specifications of subpart B) required by the terms of its governing instrument to set aside amounts which was—

"(A) created on or before October 9, 1969, if—

"(i) an irrevocable remainder interest is transferred to or for the use of an organization described in section 170(c), or

Ante, p. 553.

"(ii) the grantor is at all times after October 9, 1969, under a mental disability to change the terms of the trust; or

"(B) established by a will executed on or before October 9, 1969, if—

"(i) the testator dies before October 9, 1972, without having republished the will after October 9, 1969, by codicil or otherwise,

"(ii) the testator at no time after October 9, 1969, had the right to change the portions of the will which pertain to the trust, or

"(iii) the will is not republished by codicil or otherwise before October 9, 1972, and the testator is on such date and at all times thereafter under a mental disability to republish the will by codicil or otherwise,

there shall also be allowed as a deduction in computing its taxable income any amount of the gross income, without limitation, which pursuant to the terms of the governing instrument is, during the taxable year, permanently set aside for a purpose specified in section 170(c), or is to be used exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, or for the establishment, acquisition, maintenance, or operation of a public cemetery not operated for profit. In the case of a trust, the preceding sentence shall apply only to gross income earned with respect to amounts transferred to the trust before October 9, 1969, or transferred under a will to which subparagraph (B) applies.

"(3) POOLED INCOME FUNDS.—In the case of a pooled income fund (as defined in paragraph (5)), there shall also be allowed as a deduction in computing its taxable income any amount of the gross income attributable to gain from the sale of a capital asset held for more than 6 months, without limitation, which pursuant to the terms of the governing instrument is, during the taxable year, permanently set aside for a purpose specified in section 170(c).

"(4) ADJUSTMENTS.—To the extent that the amount otherwise allowable as a deduction under this subsection consists of gain from the sale or exchange of capital assets held for more than 6 months, proper adjustment shall be made for any deduction allowable to the estate or trust under section 1202 (relating to deduction for excess of capital gains over capital losses). In the case of a trust, the deduction allowed by this subsection shall be subject to section 681 (relating to unrelated business income).

68A Stat. 320.
26 USC 1202.

"(5) DEFINITION OF POOLED INCOME FUND.—For purposes of paragraph (3), a pooled income fund is a trust—

Ante, pp. 547,
528.

"(A) to which each donor transfers property, contributing an irrevocable remainder interest in such property to or for the use of an organization described in section 170(b)(1)(A) (other than in clauses (vii) or (viii)), and retaining an income interest for the life of one or more beneficiaries (living at the time of such transfer),

“(B) in which the property transferred by each donor is commingled with property transferred by other donors who have made or make similar transfers,

“(C) which cannot have investments in securities which are exempt from the taxes imposed by this subtitle,

“(D) which includes only amounts received from transfers which meet the requirements of this paragraph,

“(E) which is maintained by the organization to which the remainder interest is contributed and of which no donor or beneficiary of an income interest is a trustee, and

“(F) from which each beneficiary of an income interest receives income, for each year for which he is entitled to receive the income interest referred to in subparagraph (A), determined by the rate of return earned by the trust for such year.

For purposes of determining the amount of any charitable contribution allowable by reason of a transfer of property to a pooled fund, the value of the income interest shall be determined on the basis of the highest rate of return earned by the fund for any of the 3 taxable years immediately preceding the taxable year of the fund in which the transfer is made. In the case of funds in existence less than 3 taxable years preceding the taxable year of the fund in which a transfer is made, the rate of return shall be deemed to be 6 percent per annum, except that the Secretary or his delegate may prescribe a different rate of return.

“(6) TAXABLE PRIVATE FOUNDATIONS.—In the case of a private foundation which is not exempt from taxation under section 501(a) for the taxable year, the provisions of this subsection shall not apply and the provisions of section 170 shall apply.”

(c) TWO-YEAR CHARITABLE TRUSTS.—Section 673(b) (relating to trusts where the income is payable to a charitable beneficiary for at least a two-year period) is repealed.

(d) DISALLOWANCE OF ESTATE AND GIFT TAX DEDUCTIONS IN CERTAIN CASES.—

(1) ESTATES OF CITIZENS OR RESIDENTS.—Subsection (e) of section 2055 (relating to disallowance of charitable deductions in certain cases) is amended to read as follows:

“(e) DISALLOWANCE OF DEDUCTIONS IN CERTAIN CASES.—

“(1) No deduction shall be allowed under this section for a transfer to or for the use of an organization or trust described in section 508(d) or 4948(c) (4) subject to the conditions specified in such sections.

“(2) Where an interest in property (other than a remainder interest in a personal residence or farm or an undivided portion of the decedent's entire interest in property) passes or has passed from the decedent to a person, or for a use, described in subsection (a), and an interest (other than an interest which is extinguished upon the decedent's death) in the same property passes or has passed (for less than an adequate and full consideration in money or money's worth) from the decedent to a person, or for a use, not described in subsection (a), no deduction shall be allowed under this section for the interest which passes or has passed to the person, or for the use, described in subsection (a) unless—

“(A) in the case of a remainder interest, such interest is in a trust which is a charitable remainder annuity trust or a charitable remainder unitrust (described in section 664) or a pooled income fund (described in section 642(c) (5)), or

Ante, p. 549.
Repeal.
68A Stat. 227.

68A Stat. 391.
26 USC 2055.

Ante, pp. 494,
518.

Post, p. 562.
Ante, p. 558.

“(B) in the case of any other interest, such interest is in the form of a guaranteed annuity or is a fixed percentage distributed yearly of the fair market value of the property (to be determined yearly).”

(2) ESTATES OF NONRESIDENTS NOT CITIZENS.—Subparagraph (E) of section 2106(a) (2) (relating to disallowance of deductions in certain cases) is amended to read as follows:

68A Stat. 398.
26 USC 2106.

“(E) DISALLOWANCE OF DEDUCTIONS IN CERTAIN CASES.—

The provisions of section 2055(e) shall be applied in the determination of the amount allowable as a deduction under this paragraph.”

Ante, p. 560.

(3) GIFT TAX.—Subsection (c) of section 2522 (relating to disallowance of charitable deductions in certain cases) is amended to read as follows:

“(c) DISALLOWANCE OF DEDUCTIONS IN CERTAIN CASES.—

“(1) No deduction shall be allowed under this section for a gift to of for the use of an organization or trust described in section 508(d) or 4948(c) (4) subject to the conditions specified in such sections.

Ante, pp. 494,
518.

“(2) Where a donor transfers an interest in property (other than a remainder interest in a personal residence or farm or an undivided portion of the donor's entire interest in property) to a person, or for a use, described in subsection (a) or (b) and an interest in the same property is retained by the donor, or is transferred or has been transferred (for less than an adequate and full consideration in money or money's worth) from the donor to a person, or for a use, not described in subsection (a) or (b), no deduction shall be allowed under this section for the interest which is, or has been transferred to the person, or for the use, described in subsection (a) or (b), unless—

“(A) in the case of a remainder interest, such interest is in a trust which is a charitable remainder annuity trust or a charitable remainder unitrust (described in section 664) or a pooled income fund (described in section 642(c) (5)), or

Post, p. 562.
Ante, p. 558.

“(B) in the case of any other interest, such interest is in the form of a guaranteed annuity or is a fixed percentage distributed yearly of the fair market value of the property (to be determined yearly).”

(4) POLITICAL ACTIVITIES.—

(A) Section 2055(a) (relating to transfers for public, charitable, and religious uses) is amended—

68A Stat. 390.

(i) by striking out “and” before “no substantial part” in paragraph (2), and by inserting before the semicolon at the end of such paragraph “, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office”; and

(ii) by striking out “and” before “no substantial part” in paragraph (3), and by inserting before the semicolon at the end of such paragraph “, and such trustee or trustees, or such fraternal society, order, or association, does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office”.

(B) Section 2106(a) (2) (relating to transfers for public, charitable, and religious uses) is amended—

(i) by striking out “and” before “no substantial part” in subparagraph (A) (ii), and by inserting before the semicolon at the end of such subparagraph “, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office”; and

(ii) by striking out “and” before “no substantial part” in subparagraph (A) (iii), and by inserting before the semicolon at the end of such subparagraph “, and such trustee or trustees, or such fraternal society, order, or association, does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office”.

68A Stat. 410,
26 USC 2522.

(C) Section 2522(a) (relating to charitable and similar gifts of citizens or residents) is amended by striking out “and” before “no substantial part” in paragraph (2), and by inserting before the semicolon at the end of such paragraph “, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office”.

(D) Section 2522(b) (relating to charitable and similar gifts of nonresidents) is amended—

(i) by striking out “and” before “no substantial part” in paragraph (2), and by inserting before the semicolon at the end of such paragraph “, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office”; and

(ii) by inserting after “legislation” in paragraph (3) “, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office”.

(e) CHARITABLE REMAINDER TRUSTS.—

68A Stat. 220,
26 USC 661.

(1) Subpart C of part I of subchapter J of chapter 1 (relating to estates and trusts which may accumulate income or which distribute corpus) is amended by adding at the end thereof the following new section:

“SEC. 664. CHARITABLE REMAINDER TRUSTS.

“(a) GENERAL RULE.—Notwithstanding any other provision of this subchapter, the provisions of this section shall, in accordance with regulations prescribed by the Secretary or his delegate, apply in the case of a charitable remainder annuity trust and a charitable remainder unitrust.

“(b) CHARACTER OF DISTRIBUTIONS.—Amounts distributed by a charitable remainder annuity trust or by a charitable remainder unitrust shall be considered as having the following characteristics in the hands of a beneficiary to whom is paid the annuity described in subsection (d) (1) (A) or the payment described in subsection (d) (2) (A):

“(1) First, as amounts of income (other than gains, and amounts treated as gains, from the sale or other disposition of capital assets) includible in gross income to the extent of such income of the trust for the year and such undistributed income of the trust for prior years;

“(2) Second, as a capital gain to the extent of the capital gain of the trust for the year and the undistributed capital gain of the trust for prior years;

“(3) Third, as other income to the extent of such income of the trust for the year and such undistributed income of the trust for prior years; and

“(4) Fourth, as a distribution of trust corpus.

For purposes of this section, the trust shall determine the amount of its undistributed capital gain on a cumulative net basis.

“(c) EXEMPTION FROM INCOME TAXES.—A charitable remainder annuity trust and a charitable remainder unitrust shall, for any taxable year, not be subject to any tax imposed by this subtitle, unless such trust, for such year, has unrelated business taxable income (within the meaning of section 512, determined as if part III of subchapter F applied to such trust).

Ante, pp. 537,
538, 492.

“(d) DEFINITIONS.—

“(1) CHARITABLE REMAINDER ANNUITY TRUST.—For purposes of this section, a charitable remainder annuity trust is a trust—

“(A) from which a sum certain (which is not less than 5 percent of the initial net fair market value of all property placed in trust) is to be paid, not less often than annually, to one or more persons (at least one of which is not an organization described in section 170(c) and, in the case of individuals, only to an individual who is living at the time of the creation of the trust) for a term of years (not in excess of 20 years) or for the life or lives of such individual or individuals,

Ante, p. 553.

“(B) from which no amount other than the payments described in subparagraph (A) may be paid to or for the use of any person other than an organization described in section 170(c), and

“(C) following the termination of the payments described in subparagraph (A), the remainder interest in the trust is to be transferred to, or for the use of, an organization described in section 170(c) or is to be retained by the trust for such a use.

“(2) CHARITABLE REMAINDER UNITRUST.—For purposes of this section, a charitable remainder unitrust is a trust—

“(A) from which a fixed percentage (which is not less than 5 percent) of the net fair market value of its assets, valued annually, is to be paid, not less often than annually, to one or more persons (at least one of which is not an organization described in section 170(c) and, in the case of individuals, only to an individual who is living at the time of the creation of the trust) for a term of years (not in excess of 20 years) or for the life or lives of such individual or individuals,

“(B) from which no amount other than the payments described in subparagraph (A) may be paid to or for the use of any person other than an organization described in section 170(c), and

“(C) following the termination of the payments described in subparagraph (A), the remainder interest in the trust is to be transferred to, or for the use of, an organization described in section 170(c) or is to be retained by the trust for such a use.

“(3) EXCEPTION.—Notwithstanding the provisions of paragraphs (2) (A) and (B), the trust instrument may provide that the trustee shall pay the income beneficiary for any year—

“(A) the amount of the trust income, if such amount is less than the amount required to be distributed under paragraph (2) (A), and

“(B) any amount of the trust income which is in excess of the amount required to be distributed under paragraph (2) (A), to the extent that (by reason of subparagraph (A)) the aggregate of the amounts paid in prior years was less than the aggregate of such required amounts.

“(e) VALUATION FOR PURPOSES OF CHARITABLE CONTRIBUTION.—For purposes of determining the amount of any charitable contribution, the remainder interest of a charitable remainder annuity trust or charitable remainder unitrust shall be computed on the basis that an amount equal to 5 percent of the net fair market value of its assets (or a greater amount, if required under the terms of the trust instrument) is to be distributed each year.”

(2) The table of sections for subpart C of part I of subchapter J of chapter 1 (relating to estates and trusts which may accumulate income or which distribute corpus) is amended by adding at the end thereof:

“Sec. 664. Charitable remainder trusts.”

68A Stat. 296.

(f) BARGAIN SALES TO CHARITABLE ORGANIZATIONS.—Section 1011 (relating to adjusted basis for determining gain or loss) is amended—

(1) by striking out “The” at the beginning and inserting in lieu thereof:

“(a) GENERAL RULE.—The”, and

(2) by adding at the end thereof the following new subsection:

Ante, p. 549.

“(b) BARGAIN SALE TO A CHARITABLE ORGANIZATION.—If a deduction is allowable under section 170 (relating to charitable contributions) by reason of a sale, then the adjusted basis for determining the gain from such sale shall be that portion of the adjusted basis which bears the same ratio to the adjusted basis as the amount realized bears to the fair market value of the property.”

(g) EFFECTIVE DATES.—

(1) (A) Except as provided in subparagraphs (B) and (C), the amendments made by subsection (a) shall apply to taxable years beginning after December 31, 1969.

(B) Subsections (e) and (f) (1) of section 170 of the Internal Revenue Code of 1954 (as amended by subsection (a)) shall apply to contributions paid after December 31, 1969, except that, with respect to a letter or memorandum or similar property described in section 1221 (3) of such Code (as amended by section 514 of this Act), such subsection (e) shall apply to contributions paid after July 25, 1969.

Post, p. 643.

(C) Paragraphs (2), (3), and (4) of section 170(f) of such Code (as amended by subsection (a)) shall apply to transfers in trust and contributions made after July 31, 1969.

(D) For purposes of applying section 170(d) of such Code (as amended by subsection (a)) with respect to contributions paid in a taxable year beginning before January 1, 1970, subsection (b) (1) (D), subsection (e), and paragraphs (1), (2), (3), and (4) of subsection (f) of section 170 of such Code shall not apply.

(2) The amendments made by subsection (b) shall apply with respect to amounts paid, permanently set aside, or to be used for a charitable purpose in taxable years beginning after December 31, 1969, except that section 642(c) (5) of the Internal Revenue Code of 1954 (as added by subsection (b)) shall apply to transfers in trust made after July 31, 1969.

Ante, p. 558.

(3) The amendment made by subsection (c) shall apply to transfers in trust made after April 22, 1969.

(4) (A) Except as provided in subparagraphs (B) and (C), the amendments made by paragraphs (1) and (2) of subsection (d) shall apply in the case of decedents dying after December 31, 1969.

(B) Such amendments shall not apply in the case of property passing under the terms of a will executed on or before October 9, 1969—

(i) if the decedent dies before October 9, 1972, without having republished the will after October 9, 1969, by codicil or otherwise,

(ii) if the decedent at no time after October 9, 1969, had the right to change the portions of the will which pertain to the passing of the property to, or for the use of, an organization described in section 2055(a), or

(iii) if the will is not republished by codicil or otherwise before October 9, 1972, and the decedent is on such date and at all times thereafter under a mental disability to republish the will by codicil or otherwise.

(C) Such amendments shall not apply in the case of property transferred in trust on or before October 9, 1969—

(i) if the decedent dies before October 9, 1972, without having amended after October 9, 1969, the instrument governing the disposition of the property,

(ii) if the property transferred was an irrevocable interest to, or for the use of, an organization described in section 2055(a), or

(iii) if the instrument governing the disposition of the property was not amended by the decedent before October 9, 1972, and the decedent is on such date and at all times thereafter under a mental disability to change the disposition of the property.

(D) The amendment made by paragraph (3) of subsection (d) shall apply to gifts made after December 31, 1969, except that the amendments made to section 2522(c)(2) of the Internal Revenue Code of 1954 shall apply to gifts made after July 31, 1969.

(E) The amendments made by paragraph (4) of subsection (d) shall apply to gifts and transfers made after December 31, 1969.

(5) The amendment made by subsection (e) shall apply to transfers in trust made after July 31, 1969.

(6) The amendments made by subsection (f) shall apply with respect to sales made after December 19, 1969.

(h) ELIGIBILITY FOR UNLIMITED CHARITABLE DEDUCTION.—

(1) Section 170(b)(1)(C) (relating to unlimited charitable deduction for certain individuals), as amended by subsection (a) of this section, is amended by adding at the end thereof the following new sentence: "In the case of a separate return for the taxable year by a married individual who previously filed a joint return with a former deceased spouse for any of the 10 preceding taxable years, the amount of charitable contributions and taxes paid for any such preceding taxable year, for which a joint return was filed with the former deceased spouse, shall be determined in the same manner as if the taxpayer had not remarried after the death of such former spouse."

(2) The amendment made by this subsection shall apply to taxable years beginning after December 31, 1968.

Ante, p. 561.

Ante, p. 561.

Ante, p. 549.

"(3) TRANSITIONAL RULE.—In the case of any amount which, under paragraph (1) and section 1211(b) (as in effect for taxable years beginning before January 1, 1970), is treated as a capital loss in the first taxable year beginning after December 31, 1969, paragraph (1) and section 1211(b) (as in effect for taxable years beginning before January 1, 1970) shall apply (and paragraph (1) and section 1211(b) as in effect for taxable years beginning after December 31, 1969, shall not apply) to the extent such amount exceeds the total of any net capital gains (determined without regard to this subsection) of taxable years beginning after December 31, 1969."

Ante, p. 642.

(c) CONFORMING AMENDMENT.—Section 1222(9) (defining net capital gain) is amended by striking out "In the case of a corporation, the" and inserting in lieu thereof "The".

78 Stat. 100.
26 USC 1222.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1969.

SEC. 514. LETTERS, MEMORANDUMS, ETC.

(a) TREATMENT AS PROPERTY WHICH IS NOT A CAPITAL ASSET.—Section 1221(3) (relating to definition of capital asset) is amended to read as follows:

68A Stat. 321.

"(3) a copyright, a literary, musical, or artistic composition, a letter or memorandum, or similar property, held by—

"(A) a taxpayer whose personal efforts created such property,

"(B) in the case of a letter, memorandum, or similar property, a taxpayer for whom such property was prepared or produced, or

"(C) a taxpayer in whose hands the basis of such property is determined, for purposes of determining gain from a sale or exchange, in whole or part by reference to the basis of such property in the hands of a taxpayer described in subparagraph (A) or (B);".

(b) CONFORMING AMENDMENTS.—

(1) Section 341(e)(5)(A)(iv) (relating to definition of subsection (e) asset in the case of collapsible corporations) is amended to read as follows:

72 Stat. 1618.

"(iv) property (unless included under clause (i), (ii), or (iii)) which consists of a copyright, a literary, musical, or artistic composition, a letter or memorandum, or similar property, or any interest in any such property, if the property was created in whole or in part by the personal efforts of, or (in the case of a letter, memorandum, or similar property) was prepared, or produced in whole or in part for, any individual who owns more than 5 percent in value of the stock of the corporation."

(2) Section 1231(b)(1)(C) (relating to definition of property used in the trade or business) is amended by inserting "a letter or memorandum" before "or similar property".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to sales and other dispositions occurring after July 25, 1969.

SEC. 515. TOTAL DISTRIBUTIONS FROM QUALIFIED PENSION, ETC., PLANS.

(a) LIMITATION ON CAPITAL GAINS TREATMENT.—

(1) EMPLOYEES' TRUST.—Section 402(a) (relating to taxability of beneficiary of exempt trust) is amended by adding at the end thereof the following new paragraph:

68A Stat. 135;
74 Stat. 79.

"(5) LIMITATION ON CAPITAL GAINS TREATMENT.—The first

respondence files, following her instructions from Mr. Newman to separate the correspondence from important people and foreign dignitaries from the general correspondence. This would mean that at the earliest the estimate could not have been prepared until after December 8, his last visit to the National Archives, and probably was not made until after December 22, when Mary Livingston called him to inform him that she had completed what he had requested and told him the status of the general correspondence files at that time.

The staff does not understand and Mr. Newman could not explain the reason why the estimate was dated April 1969, unless the estimate had been prepared as late as March 1970, at which time Mr. Newman may have consulted his records and been confused, as he explained was the case with the dates on his appraisal document, or unless there was an intent on Mr. Newman's part to give the impression that this estimate was made on that date.

Mr. Newman told the staff that he does not remember when he first heard of the \$500,000 figure to which Mr. DeMarco referred. He said at first that he thought it may have been in his first conversation with Mr. DeMarco, which he believes occurred on October 31, 1969, but upon thinking back on the matter, he said that it could have been later and also indicated that it could very well have been on March 27, 1970. (The events of this date will be discussed below.)

If Mr. Newman had heard in 1969 about a \$500,000 amount that was intended to be given, the staff suggests that he would have recommended that the gift consist of more than just the General Correspondence files, since his estimate for the correspondence files only amounted to \$436,400. The staff believes that in November 1969 Mr. Newman understood that the President would make a large gift in 1969 since the House version of the Tax Reform Act eliminated this deduction as of the end of 1969. Under the House version of the bill, it was possible to make a large gift at the end of the year to cover a 6-year period—the current year and the 5-year carryover period.

Newman's impressions of the gift as of the end of 1969

Mr. Newman told the staff that he never understood nor was led to believe by Mr. DeMarco or Mr. Morgan that a gift had been given before July 25, 1969. He said he called Mr. DeMarco on December 24 (the staff has verified this call on his telephone records) to ask if there was anything he should be doing in view of the Tax Reform Act (which had passed Congress on December 22 and was sent to the President for his signature to enact it into law). He said that Mr. DeMarco told him there was nothing more for him to do then. Mr. Newman told the staff that as of the end of 1969 he was not aware that any gift had been made by the President and that if he had been asked to make any recommendations as to what was to be given, he would have recommended the General Correspondence files.

Staff analysis

Mr. Newman's and Mrs. Livingston's account of their activities concerning the examination of the undeeded papers in November and December 1969 suggests that when Mr. Newman first talked to Mr. DeMarco, probably in October, they were probably talking about an intent to make a large gift at the end of 1969 to cover the current year and a 5-year carryover period, which would have been consistent

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After working at the Archives again on December 8, Newman said he just quit at the end of the day. He said he doesn't remember why, but it may have been because he came to the end of an integral series of , correspondence. He said that he would not have gone back to the Archives after November 20, unless someone had asked him to, or said not to quit. But he does not remember any contact with the President's representatives between November 20 and December 8.

Newman said that once he asked DeMarco a question about the status of the Tax Reform Act of 1969 as it affected gifts of papers. He said that DeMarco said he would get back to Newman, but that Newman was never again contacted. He said that his phone bill shows a call to the White House on December 21, 1969. Newman said he wanted to talk to someone there about the Tax Reform Act of 1969, and he thinks he may have talked to Higby. But he said that he "got nowhere" in obtaining information.

From December 21 through December 23, 1969, he was in Austin, Texas, looking at non-papers items in the Johnson Collection. He said that President Johnson had decided not to make a gift. He said that he definitely talked about the change in the tax law to the library staff, and may have discussed the change with President Johnson. He said that he had no discussion with President Johnson about President Nixon's gift. On December 23, he returned to Chicago from Austin.

He reaffirms his statement to the Joint Committee about making a telephone call to DeMarco on December 24, 1969, in which he asked

DeMarco whether there was anything more to do in light of the Tax Reform Act of 1969 having been passed by both houses of Congress eliminating deductions for gifts of papers made after July 25, 1969.

DeMarco told him there was nothing for him to do then.

We asked Newman what he felt the status of the President's gift was as of the end of 1969. He said that as of the end of the year he did not know that the President had made a gift. "I thought he'd blown it," Newman said.

7. Estimated Value of Correspondence.

Between December 8, 1969 and March 27, 1970, Newman said that he must have made the estimate of the general correspondence files dated "April, 1969" (Joint Committee Report, p. A-264). He said that this was an estimate done by him for use in his own files, and that he had never sent this to anyone else. He said that he dated the estimate April, 1969 by mistake, and probably based the dating on the day when he first visited the Archives in 1969, not when he first viewed the papers delivered to the Archives on March 26 and 27, 1969.

8. Activities of March, 1970.

Newman said that his letter to DeMarco dated March 3, 1970 (Joint Committee Report, p. A-272) was written with the impression that nothing had been done about making a gift of papers in 1969. He said that while his reference to a telephone call in that letter may have

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DeMarco did not recall the telephone call to him from Newman on December 24, 1969 in which Newman asked DeMarco if there was anything he should be doing in view of the Tax Reform Act, and in which DeMarco reportedly said that there was nothing more for Newman to do then. (page 75, Joint Committee Report) DeMarco said "At no time did I give him instructions on anything, except to get the appraisal to me."

In March, 1970 DeMarco realized that he had not yet received an appraisal from Newman, and he stated that he called Edward Morgan to call Newman to get him going on the appraisal. On March 27, 1970, he received a telephone call from Newman who said he was completing the appraisal of the papers, which were worth \$576,000. Newman then read him a list of the items in the gift. On Monday, April 6, Newman called DeMarco and said the appraisal was finished, had been signed and was in the mail. DeMarco stated that he received the appraisal on April 8, 1970, xeroxed it, and took it to Blech that afternoon for attaching to the income tax return.

DeMarco stated that he had met Newman in person twice. The first was in January 1971 when Newman was passing through Los Angeles and made a courtesy call on DeMarco. At that time, Newman suggested to DeMarco that he urge the President to set up a system of cataloging his papers, and appoint a group of literary executors.

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Exhibit I - 33

January 9, 1970

Archivist of the United States

Tax law change

The Administrator

The new tax law canceled the deductions in Federal income taxes that could be claimed by a private person donating papers to a manuscript repository, whether Federal, state, local, or private. (Unless such gifts were made before July 25, 1969, no credit may be claimed unless the donor pays income taxes on the amount the papers appreciated in value from the time they were produced.)

[It now seems apparent that the prospect of claiming tax deductions has encouraged many persons to donate their papers to a Presidential Library or other manuscript repository. It is likewise plain that the lack of a tax incentive has slowed up the flow of gifts to Presidential Libraries. Foremost in importance was the expected donation by President Nixon of another increment of his pre-Presidential papers as a second installment to those deeded to the Government of the United States in December 1968. No such donation was made in December 1969, although we understand all plans had been made for it. Also expected to be received by the National Archives and Records Service but not donated, was a body of personal papers of Robert Haldeman and one from former President Johnson. These are only three of at least half a dozen gifts that we understood were about to be made but were withheld.

While it is true that many dedicated citizens and public servants will still give their papers to Presidential Libraries, many others will be inclined to hold on to them for longer periods, either for their own reference, or for the sale of selected autographed items in the commercial market, or in the hope that Congress, on reflection, will change the tax law in a year or so. The lapse of time will mean in some instances that papers will be carelessly handled, damaged or dispersed, and some even destroyed. It should be emphasized that the new law does not place

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Presidential Libraries in a position less competitive than other repositories, but harms the acquisition programs of all such institutions.

One main purpose in setting up Presidential Libraries was to provide a means whereby the papers of a President and of his associates could be preserved together and intact for future generations. The amount of Federal taxes involved is, in relation to the Federal budget, minuscule. The value to the American people in collecting and preserving the papers of the President and his times is incalculable.

Although the old law was much abused by donors and manuscript appraisers, I think we should support a change in the law that will increase the flow of historically-valuable manuscripts to appropriate institutions without abetting undue tax advantages to public officials. It is likely that non-Federal libraries and other manuscript repositories sooner or later will mount a campaign to change the law.

JAMES B. RHOADS

Official file-NL ✓

Day file-N

Reading file-NL

MWLivingston:DJReed/jwa

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Exhibit I - 34

February 2, 1970


Archivist of the United States

Topics for White House discussion

The Administrator

The following information is given for your use in a discussion with Mr. Bob Haldeman on Tuesday, February 3, concerning the development of a Richard Nixon Presidential Library.

A. Status of Nixon Papers

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1. Most of the pre-Presidential papers are now in the National Archives. A portion of these have been deeded to the Government and that portion has been boxed, labelled and listed. The remainder of the pre-Presidential papers, here on courtesy storage, have been listed by categories. None of the papers are available to anyone except NARS staff without permission from the President.
 2. We had expected a deed of gift from the President covering a second installment of papers before the end of the calendar year, but the Tax Reform Act apparently eliminated this.
 3. We have no official duties yet relating to Presidential papers now being created and filed in the White House Central File or in any White House staff office.
 4. We receive, catalog and store all gifts received by the President and transferred to the National Archives Building by the White House Gift Unit.

B. Relations with the Richard Nixon Foundation

1. The Planning and Development Committee of the Nixon Foundation visited the Eisenhower, Johnson and Roosevelt Libraries during 1969, together with

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the Central Office, and plans to visit the Truman Library on February 7.

2. Each of these visits has been very cordial and, we hope, informative for the Committee. We have discussed with them the process of establishing a Presidential library and the problems that must be expected.
3. Still to be visited is the Hoover Library in West Branch, Iowa. They do not plan to visit the Kennedy Library in its temporary quarters in Waltham, Massachusetts.
4. We understand that the Foundation plans to make a report to the President, probably in April or May.

. Staffing

1. Terry Good of the Office of Presidential Libraries has been assigned to the White House by the Office of Presidential Libraries, NARS. He supervises compilation of the daily diary, performs reference service on President Nixon's pre-Presidential papers, and is available for any other services or assignments looking toward a future Nixon Library.
2. We have already urged the need to appoint a higher level historian-archivist who might work for the time being out of the White House and eventually become the director of a Nixon Library. This person should be someone having the President's confidence as well as the maturity and professional stature to command respect from White House staff members.
3. As the need develops, we are prepared to create gradually a cadre of archivists within the Office of Presidential Libraries looking toward a future staff for the Nixon Library.

D. Projects to be undertaken

1. Acquisition of papers. The recent departure of Dr. Arthur Burns from the White House staff underlines the need for a strong memorandum from the President or one of his principal assistants to all members of the President's staff directing each of them to donate whatever papers he has generated as a White House staff member. Such a memorandum is needed now for those staffers who leave in mid-term. Toward the end of the President's term of office, a major acquisitions drive must be undertaken and can be coordinated by the National Archives and Records Service.
2. Documentation of major issues and events. An influential White House staff member, with the assistance of the proposed historian-archivist, should decide which major events or accomplishments of the Administration are to be documented in a special and deliberate manner. He should then obtain access to selected documents in Executive agencies relating to such events or accomplishments and have them copied for deposit in the future Nixon Library.
3. Documentation of the Nixon Administration by Executive agencies. Histories of each Executive agency for the Nixon years can and should be compiled by the respective agencies. Selected documentation underlying the histories should be microfilmed.
4. Photographic record. An expanded effort should be undertaken to assure an adequate photographic record of the Nixon Administration (both motion and still pictures) and more systematic efforts should be undertaken to identify the events and persons in the photographic record.
5. Oral history. Toward the end of the Nixon Administration or soon thereafter, an oral history project should be undertaken under the supervision of the National Archives and Records Service to interview persons who played significant and notable roles in the history of the Nixon years.

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Among all of these projects, the one action that will serve as a catalyst for the others if the appointment by the President of an historian-archivist to serve on his immediate staff. A good choice will ensure the forward motion of the other projects.



JAMES B. RHOADS

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Day file-N

Reading file-NL

RAJacobs/jwa

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Exhibit I - 36

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Free Appraisals

18 East Chestnut Street Chicago, Illinois 60611

RALPH G. NEWMAN
President

3 March 1970

RECEIVED

MAR - 5 1970

To: *Roberts*
WHICHA *K. D. & Sons*

Dear Mr DeMarco:

Now that we are in 1970 and you have had an opportunity to study the Revised Reform Tax Bill of 1969, I wonder what procedure will be with reference to the Nixon Papers and other material.

As I mentioned over the telephone, the President has a considerable amount of material in the National Archives that qualifies as gift material under this bill. This includes books, trophies, plaques, artifacts, and other items not covered by section 514, which relates to personal papers.

Judging from what I have heard from around the country, many learned institutions, the Library of Congress, the National Archives, and many other repositories, are going to present their case to the Congress again, with the hope that the restrictions imposed by section 514 can be adjusted. This version of the bill has had the effect of bringing to a complete stop gifts of material that would be of tremendous use to the research libraries of the nation. It will probably result, on the part of some individuals, in sales and dispersal of some of the material, which would be a great pity. Unfortunately, it will also result in the destruction of papers by some individuals.

In any event, I thought I would check this matter out with you.

Sincerely yours


Ralph G. Newman

Mr Frank DeMarco
611 West 6th Street
Los Angeles, California 90017

DeMarco did not recall the telephone call to him from Newman on December 24, 1969 in which Newman asked DeMarco if there was anything he should be doing in view of the Tax Reform Act, and in which DeMarco reportedly said that there was nothing more for Newman to do then. (page 75, Joint Committee Report) DeMarco said "At no time did I give him instructions on anything, except to get the appraisal to me."

In March, 1970 DeMarco realized that he had not yet received an appraisal from Newman, and he stated that he called Edward Morgan to call Newman to get him going on the appraisal. On March 27, 1970, he received a telephone call from Newman who said he was completing the appraisal of the papers, which were worth \$576,000. Newman then read him a list of the items in the gift. On Monday, April 6, Newman called DeMarco and said the appraisal was finished, had been signed and was in the mail. DeMarco stated that he received the appraisal on April 8, 1970, xeroxed it, and took it to Blech that afternoon for attaching to the income tax return.

DeMarco stated that he had met Newman in person twice. The first was in January 1971 when Newman was passing through Los Angeles and made a courtesy call on DeMarco. At that time, Newman suggested to DeMarco that he urge the President to set up a system of cataloging his papers, and appoint a group of literary executors.

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been to the telephone call made on December 24, 1969, he thinks he would not have referred to a call three months prior to the date of the letter. Nevertheless, he said that in that time period he could not recall having contacted DeMarco, and is sure DeMarco did not call him and ask him to produce an appraisal of the President's papers.

On March 27, 1970 Newman received a telephone call from DeMarco, who told him, "the date of delivery of the President's papers was the date of the gift. I need a description of the papers." Newman said he told DeMarco, "I have \$ 436,000 in correspondence. I will have to go back to the Archives to get more information." We asked Newman what his reaction was when DeMarco told him that a gift had been made a year earlier. "I was surprised," he said.

And Newman said he called Mary Walton Livingston and asked her to select additional items to bring the value up to \$550,000 worth. He said he later in the day received a call from Mrs. Livingston, who described certain series to him. Later that day he sent a letter to Mrs. Livingston, enclosing a description of the items. He believes that he sent a copy of this letter to DeMarco.

Newman said that in his March 27, 1970 letter to Mrs. Livingston he was careful to say that the items were "designated as a gift by Richard Milhous Nixon in 1969." He said that this is what he had been told by DeMarco, and that he wanted the record to reflect only what he had been told. He said that his letter made no reference to his conversations of that day with Mrs. Livingston, or her selection of the materials for the gift, because "I had already thanked her on the phone for her work."

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Morgan vaguely recalls a meeting with Newman at the end of October or beginning of November, 1969. Morgan remembers the Newman letter of November 7, 1969 (p. A-233). Newman was concerned about particularly sensitive papers and he came by Morgan's office and said that he was concerned that these sensitive papers should be in the vault area. However, Morgan does not remember the appraisal attached as part of the November 7 letter. Morgan does not recall receiving the appraisal although he must have gotten it and felt that a \$2 million gift had been made. He does not recall discussing the letter and the appraisal. At that time he was "on the road" much of the time with Richard Nathan, discussing welfare reform.

Morgan does not recall calls from DeMarco to get Morgan to get Newman working on the papers.

As for the 1969 Tax Reform Act Morgan recalls no discussions about the change of the tax law, except talk in the White House mess that the change in the law would adversely affect the President's interests. Morgan knows nothing about the events of March 27, 1970 and the Newman and DeMarco telephone call in which DeMarco told Newman that a gift had been made.

As for April 10, 1970 Morgan remembers basically nothing. He does not recall signing a deed at a meeting with DeMarco and Kalmbach in Washington. Morgan has a recollection that he was called out of a meeting by his secretary to go to his office. He saw DeMarco there, who showed him a deed, saying "we have to have more copies of this." Morgan said, "Okay," signed the deeds and returned to the meeting.

responsible for making any determinations about material to be given. He said he may make recommendations but that the designation of the gift must come from his client. Once a designation is made, then his responsibility is to appraise the gift.

In some cases, he said, clients may tell him how much they would like to give, and he examines the material that the client has and recommends how much of the material should be given to cover the amount desired by the client. Mr. Newman did this in the case of President Johnson, and he assumed that this was what he was to do on President Nixon's papers. Nevertheless, Mr. Newman told the staff, and the staff concludes from all the information it has, that neither the National Archives nor Mr. Newman believed a gift had been made in 1969.

G. EVENTS SURROUNDING THE PREPARATION OF THE FINAL APPRAISAL DOCUMENT FOR THE SECOND GIFT OF PAPERS, MARCH-APRIL 1970

Events of March 27, 1970

Certain important events relating to President Nixon's second gift of papers occurred on March 27, 1970. The staff has discussed these events with Frank DeMarco, Ralph Newman, and Mary Livingston, and their versions of these events are discussed below.

DeMarco's version.—In his staff interview, Mr. DeMarco said that on March 27, 1970, Mr. Newman telephoned him and advised him that he had completed his appraisal of the second gift and that his itemized description had been completed and had been coordinated with the box numbers used by the Archives. In his statement to the staff (Exhibit I-10) Mr. DeMarco stated:

"He dictated to me over the phone the exact final description of the material and the box numbers. I thought he said in that conversation that he was at the Archives in the 'basement.' It could be, however, that he was referring to the location of the material in the 'basement' of the Archives but that he, in fact, was in Chicago. I am not sure on this point. He further stated that he would have the final written formal appraisal typed immediately and would mail it out to me. In that conversation he told me that his final appraisal figure was \$576,000. In that conversation, he reminded me that he had removed the 'sensitive files' and that he had felt originally that what remained was worth \$500,000. He then explained that upon detailed examination, his opinion was that the material was worth \$576,000. He pointed out that the material he had recommended be removed as 'sensitive' were files respecting J. Edgar Hoover, Jacqueline Kennedy and the Viet Nam war."

Newman's version.—Mr. Newman told the staff that on March 27, 1970, he received a telephone call in his office in Chicago from Mr. DeMarco, who was in Los Angeles. Mr. Newman said that Mr. DeMarco told him that the date of the physical delivery of the undeeded papers (March 27, 1969) was the date of the gift and asked him for a general description of the gift, which was to be in the general area of \$500,000. Mr. Newman said he told Mr. DeMarco that while he had some of the data, it would be necessary for him to call the National Archives for additional data and that Mr. DeMarco authorized him to do so and to advise the National Archives that this material so designated constituted the President's 1969 gift.

Mr. Newman said that he then telephoned Mary Livingston at the National Archives telling her that the President's attorney had authorized him to designate the President's 1969 gift and that the President required in addition to the general correspondence "enough additional material to constitute approximately 500 linear feet of paper in all, or as I estimated, 300 to 350 additional boxes." Mr. Newman said further, "I asked her to select materials or groups which would be natural from an archival point of view." Mr. Newman said that within an hour or so Mrs. Livingston telephoned him and gave him the information and that he then wrote to her confirming the list that they discussed on the telephone to be certain that the records coincided. Mr. Newman said that he also believes that he sent a copy of his letter and the list to Mr. DeMarco. Mr. Newman has no record of making any telephone calls to Mr. DeMarco on that date and said that if he spoke to him again on March 27 (apart from Mr. DeMarco's original call to him) it must have been a call from Mr. DeMarco to him or a return back from Mr. DeMarco's call to him. The staff has verified that there is no listing in Mr. Newman's phone bills of a call to Mr. DeMarco on March 27, 1970. It is not clear to the staff how these calls were charged, since they do not appear on any telephone bills examined by the staff. The staff did note a call on Mr. Newman's bill to the Archives.

Livingston's version.—In her statement to the staff, Mary Livingston said as follows:

"I had no further contacts with Mr. Newman after December 22, 1969, on the Nixon papers, until March 27, 1970. On that day I received a telephone call from Mr. Newman in Chicago. As he talked to me I made notes of what he said. I still have my notes of what he said. He said that he needed 600,000 items for deeding by President Nixon. The White House needed more than just the General Correspondence file. He figured that there would be 100 pages, or items, to the inch and therefore 500 items to the archives box. To get 600,000 items, he would therefore need 1,200 archives boxes of papers, amounting to approximately 500 linear feet. He said he needed a rough identification of the material, and the numbers of the boxes at the beginning and ending of each file or series. He mentioned the General Correspondence file, minus the material we had withdrawn, as the primary series to be deeded. If you will turn to the front page of my handwritten notes, he mentioned the words 'for deeding, 1969.' He left it to me, he said, to select the remaining boxes because he was in Chicago and I was the person who had worked on the papers with him. He said he needed the information for the White House within the hour. As soon as he finished talking, I used the series descriptions compiled under Sherrod East to try to get an idea of what papers I might add. I decided I would have to go to 19E3 to look at the material. I asked Jan Shelton, an archivist trainee, temporarily on duty in another office, to assist me. She was a very intelligent young woman, very quick, had done editorial work, and was very accurate. I needed someone who could carefully look at box labels on the papers and read them off to me to write down. I told her only that I needed her to do some work for the White House. There were 828 boxes in the general correspondence file, in boxes numbered from 18 through 845, to be deeded, according to Mr.

Newman. That left me needing 372 more in order to make a total of 1,200 boxes. I already was familiar with the 'Appearance File.' It was labelled; it was in chronological order; the boxes were numbered; and so I immediately decided to recommend it to Mr. Newman as a file to be deeded. I also decided not to go back in time and select earlier material: the Hiss papers, for instance, weren't in good shape; the 1946 campaign material was fragmented. The Appearance File, it is true, covered more than the Vice Presidential period, it went from 1948 to 1962, but it was too large and well-organized to miss—a continuous series in boxes numbered from 1 through 173. I was faced with finding other series that could be quickly identified. I decided to look for other papers from the Vice Presidential years that would supplement material in the General Correspondence.

"This is when I needed Jan Shelton's help. Let me say that the conditions of storage on 19E3 were crowded. The rows were very close together; the first row of boxes was at floor level. It would have been physically impossible to write down the box numbers and labels accurately without a second person. In order to assemble the item called on the chattel deed, 'Correspondence regarding invitations 1954-61,' we looked at a number of different series. Jan would read out the numbers and labels and I would write them down. I lumped them together as correspondence regarding invitations and turndowns of invitations, 56 boxes. There was not then and is not now a consecutive set of boxes from 1 to 56 labeled 'Correspondence regarding invitations, 1954-1961.' Next I decided to recommend to Mr. Newman that the foreign trip files for the Vice Presidential era should be deeded. This was partly because some similar files had been deeded in 1968. However, the foreign trip files on 19E3 presented a problem because they too were not in any single series of 116 boxes. The Far East trip of 1956 had 3 boxes; the Central America trip had ten boxes and so on. And for each trip, there was no continuous numbering of boxes, rather a number of separate files for each trip, separately numbered. I called them all 'Foreign Trip Files of the Vice President.' I then decided to recommend to Mr. Newman files on the Khrushchev visit to the United States. They were in two series. I designated the Khrushchev files as a separate item from the Foreign Trip files. As soon as we reached a total of 1,176 boxes that seemed to me suitable for deeding, I called Mr. Newman on the telephone and gave him overall titles and the numbers of boxes for the new material I was recommending. I made a memo for the record that very Friday, March 27, 1970, listing the General Correspondence as Vice President, boxes 18-845, and the four new categories (appearance file, invitations, foreign trips, and Khrushchev visit). I even kept my rough draft of the memo in addition to my telephone notes.

"The minute I got Mr. Newman's call on March 27, 1970, I was disturbed and worried that a deed was being made for the year '1969.' My memory isn't as good about all the things I have done at the National Archives as it is about this transaction. This is for the reason that I was so disturbed by it at the time—in March 1970—and have been concerned about it ever since."

The staff has interviewed Jan Shelton, who assisted Mary Livingston in designating the boxes, and she confirms this story in all essential respects.

Correspondence between Newman and Livingston

After the telephone conversation, Mr. Newman wrote a letter to Mrs. Livingston (Exhibit I-37) enclosing a list of the materials which had been discussed on the telephone. The letter stated, "This is being done to be certain that my records correspond with yours. . . ." The letter states that it referred to "material which were designated as a gift by Richard Milhous Nixon in 1969."

Mrs. Livingston said that after her activities of March 27, 1970, she prepared a memorandum from Dr. Reed to Dr. Rhoads (Exhibit I-38) describing what she had done. The memorandum specifically pointed out that the National Archives was asked to designate additional items for the gift and that the job was done within an hour. A routing slip attached to this memorandum dated March 31, 1970, contained a hand-written note by Dr. Rhoads saying that "as the Administrator was going out of town, I sent nothing over on this." She also said that she prepared a memorandum for the record (Exhibit I-39) listing what she and Mr. Newman had designated.

Mrs. Livingston said that on April 6, Mr. Newman called her about his letter of March 27 and, according to a handwritten note by Mrs. Livingston, stated that his letter of March 27 was the only deed of gift the National Archives will receive. (Mr. Newman told the staff that this is not an accurate account of what he said to Mrs. Livingston on the telephone that day. He said that he was indicating what the gift would be but that he at no time had anything to do with the deed and was unaware of the status of either the 1969 or the 1968 deeds.) Mrs. Livingston also stated that in this telephone call, Mr. Newman requested a letter from the National Archives acknowledging his March 27 letter and the receipt of the gift. Mrs. Livingston told the staff that Mr. Newman said it would be better for everyone, including the White House, "if all dealings on this point would stay between the two of us."

Mrs. Livingston said that she prepared a draft of a proposed letter to Mr. Newman to be signed by Dr. Reed. According to a GSA routing slip the letter was sent to Dr. Rhoads, since Dr. Reed was out of town, and then to the GSA General Counsel's office. Mrs. Livingston said that some time between the General Counsel's receipt of the draft and April 9, the General Counsel's office told Dr. Rhoads to have Mrs. Livingston prepare a response under her own signature and not to review it. (Neither Dr. Rhoads nor the personnel presently in the General Counsel's office recall that sequence of events, although the routing slips indicate that her proposed letter to be sent by Dr. Reed did go to the General Counsel's office.) Mrs. Livingston said that she then prepared a draft and sent a noncommittal letter to Mr. Newman (Exhibit I-40) which states, "The pre-Presidential papers of Richard M. Nixon listed briefly in your letter to me of March 27, 1970, are described in greater detail below." The letter further stated that the materials were delivered to the National Archives around March 27, 1969. The letter gave no indication, as Mrs. Livingston said was her intent, that the materials were being given to the National Archives.

On April 9, 1970, Mrs. Livingston said that Mr. Newman called her, and she read him her letter. Mrs. Livingston said that Mr. Newman told her that the response was sufficient. On April 10, 1970, Mrs. Livingston wrote a memorandum for the record (Exhibit I-41) in which she said that the Archivist was given copies of the various letters and memoranda in the National Archives files showing delivery of the papers on March 27, 1969. The memorandum states that the Archivist did approve of Mrs. Livingston's April 9 letter and that the letter was sent to Mr. Newman.

Preparation of tax return information on the gift of papers

Mr. DeMarco indicated that on March 28, 1970, he met with Arthur Blech at his office, and they went over a preliminary final draft of the tax return. He said he had called Mr. Blech the previous day after his conversation with Mr. Newman and informed him that the final appraised value of the gift was \$576,000 and that this figure should be used in computing the deduction on the 1969 return.

Mr. DeMarco said that on April 6, 1970, he received another telephone call from Mr. Newman in which Mr. Newman advised him that the final formal appraisal was finished and had been mailed to him. Mr. DeMarco indicated that he called Edward Morgan and reported this to him.

Mr. DeMarco said that Mr. Blech had advised him that he would need a summary of the gift as required by Treasury regulations. He said that on April 7, 1970, he dictated to his secretary a summary schedule to be attached to the tax return.

Mr. DeMarco indicated that on April 8, 1970, he received the final formal written appraisal from Mr. Newman which was "date stamped April 8, 1970." He said that he made a copy of the appraisal document and attached the copy together with the summary sheet setting forth the basic facts of the gift to the final tax return.

The return was signed in Washington by both President and Mrs. Nixon on April 10, 1970. (A more detailed discussion relating to the signing of the tax return and events leading up to it are discussed below with respect to the deed.)

Errors on Newman Appraisal

Presumably as a consequence of the hurried way in which the second Nixon gift, other than the general correspondence, was selected, there are some interesting errors on the Newman appraisal (Exhibit I-42). The number of boxes in each category is correct; however, the number of items in each category does not always correspond with the number of boxes, using the rule-of-thumb suggested by Mr. Newman to Mrs. Livingston that there were 500 items per box.

The number of items of general correspondence (414,000) is precisely equal to the number of boxes (828) multiplied by 500. However, there are 500 too many items listed under "Appearance File," 1,000 too few under "Correspondence Re Invitations and Turndowns," 1,000 too few under "Foreign Trip Files," and 13,500 too many under "Visit of Nikita S. Khrushchev." As a result, the number of items in the 1,176 boxes totals 600,000, which was the original target Mr. Newman gave to Mrs. Livingston, not 588,000, which is $1,176 \times 500$. It is interesting to note that the Khrushchev file, where the major error occurred, consists only of newspaper clippings.

The staff has found no explanation of these errors; possibly, Mr. Newman was a bit overzealous in reconciling the number of boxes with his target number of items.

Staff analysis

From the statements of Ralph Newman and Mary Livingston, the staff believes that, except for the general correspondence files (minus the 17 boxes of sensitive correspondence), the designation of the papers to be included in the second gift of papers was not made until March 27, 1970. Furthermore, the selection was made by Mrs. Livingston, not Mr. Newman.

It is not clear who or what initiated the flurry of activity on the Nixon papers on March 27, 1970, after three months when no work was done on them, because, apparently, at least one of the men representing President Nixon, Mr. Newman, believed that they had missed the July 25, 1969, deadline.

II. ACCEPTANCE OF GIFT BY THE NATIONAL ARCHIVES IN APRIL 1970

Mary Livingston's statement to the Joint Committee staff says the following about the letter she sent to Newman on April 9:

"By April 24, 1970, I was worried as to how, if this [the letter] was a deed of gift, we could designate the papers that were deeded, especially the smaller series. On April 24, I wrote a memo to Dr. Reed, headed 'Pending Business,' asking how the boxes in question could be marked so as to distinguish them from the rest of the March 27, 1969, shipment. Dr. Reed gave me a written not to 'mark them in a temporary way (e.g., with pencil) until we know further of W. H. intentions.' With the assistance of Mr. Percy Berry, I marked all of the 1,176 boxes listed in Mr. Newman's letter of March 27, 1970, with the letters 'U.S.' in pencil. I further noted the location of each file on a carbon copy of my letter of April 9, 1970, to Mr. Newman."

In his staff interview, Dr. Reed confirmed that he told Mrs. Livingston to mark "U.S." on the designated boxes on April 24, 1970.

Apparently, as discussed below, the deed was picked up from Mr. Morgan's office by a GSA representative after April 10, 1970, and before April 24, 1970.

In their second set of answers to IRS questions (Exhibit I-20), the GSA indicated that the National Archives was notified that a gift had occurred by a memorandum received April 24, 1970, from Edward Morgan including a right of access for Ralph Newman (Exhibit I-43). It also noted that Mrs. Livingston had marked "U.S." on the boxes on that date.

Staff Analysis

This statement implies that by April 24, 1970, the staff at the National Archives that had the responsibility for the Nixon papers believed that the second Nixon gift had been made, as evidenced by their marking "U.S." on the boxes believed to have been given. This action is the first indication by the Archives that they had accepted the second Nixon gift, so that the staff concludes that this acceptance occurred sometime between April 9, 1970, the date of the noncommittal Livingston letter to Newman, and April 24, 1970.

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Exhibit I - 37

ABRAHAM LINCOLN BOOK SHOP, INC.

Franklin D. Roosevelt
18 East Chestnut Street Chicago, Illinois 60611

RALPH G. NEWMAN
President

27 March 1970

Telephone
WHitchall 4-3003

Mrs. Mary Livingston
Office of Presidential Libraries
National Archives Building
Washington, D. C. 20408

Dear Mrs. Livingston,

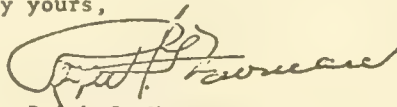
I enclose herewith a general description of the eleven hundred and seventy-six (1176) boxes of manuscript material which were designated as a gift by Richard Milhous Nixon in 1969.

This is being done to be certain that my records correspond with yours and that this material is being kept separated from the balance of the Nixon papers.

I have completed all of my preliminary work on this material, but will be returning soon to gather some detailed information I will be requiring. I shall advise you before coming East so that you can expect me.

Thank you again for your always splendid cooperation.

Sincerely yours,


Ralph G. Newman

RGN/e
encl.

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PROPERTY OF RICHARD MILHOUS NIXON
THE WHITE HOUSE
WASHINGTON, D.C. 20500

THE PAPERS OF RICHARD MILHOUS NIXON
PART II

I.	GENERAL CORRESPONDENCE AS VICE PRESIDENT 1953-1961: AANDAHN THROUGH ZWIENG (BOXES 18 THROUGH 845)	828 BOXES
II.	APPEARANCE FILE 1948-1962 (BOXES 1 THROUGH 173)	173 BOXES
III.	CORRESPONDENCE RE. INVITATIONS AND TURN-DOWNS: 1954-1961 (56 BOXES)	56 BOXES
IV.	FOREIGN TRIP FILES AS VICE PRESIDENT 1953-1961 (116 BOXES)	116 BOXES
V.	VISIT OF KHRUSHCHEV TO THE UNITED STATES 1959 (3 BOXES)	3 BOXES
TOTAL NUMBER OF BOXES		<u>1176</u>

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been to the telephone call made on December 24, 1969, he thinks he would not have referred to a call three months prior to the date of the letter. Nevertheless, he said that in that time period he could not recall having contacted DeMarco, and is sure DeMarco did not call him and ask him to produce an appraisal of the President's papers.

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And Newman said he called Mary Walton Livingston and asked her to select additional items to bring the value up to \$550,000 worth. He said he later in the day received a call from Mrs. Livingston, who described certain series to him. Later that day he sent a letter to Mrs. Livingston, enclosing a description of the items. He believes that he sent a copy of this letter to DeMarco.

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On April 3, 1970, he said that he called DeMarco and told him that he was preparing an appraisal document and that he would mail it out shortly. On April 6, 1970 he called Mrs. Livingston at the Archives. He said he did not say in that conversation that his letter to the Archives would be the only deed of gift. He said that he may have said, "All dealings on this point should stay between the two of us," but meant by his comment that the Archives should not make any public announcement of the President's gift. He meant any publicity on this matter should come from the White House. He said he realized that Mrs. Livingston would have to report the fact of the appraisal to Drs. Reed and Rhoads at the Archives.

On April 7, 1970 he called DeMarco to tell him that the appraisal was in the mail. He said that he received a telephone call from Mrs. Livingston on April 9, who read to him her reply to his letter of March 27. He said that he agreed her letter was sufficient.

Newman said that he mailed his appraisal to DeMarco, but heard nothing further from DeMarco. He said he did not receive a copy of the deed of gift. He said he assumed the appraisal was for tax purposes but was not even told that a deed of gift existed for 1969 until he received a telephone call from Nick Kotz of the Washington Post in June of 1973.

9. Letter of Access dated April 22, 1970.

Newman said that he never received any letter of access. He said that they went to the National Archives directly, as far as he could

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APPRAISAL

STATE OF ILLINOIS }
COUNTY OF COOK } ss

Ralph G. Newman being first duly sworn, upon oath deposes and states as follows:

1. He is the president and the duly authorized agent in this behalf of Abraham Lincoln Book Shop, Inc., and he makes this affidavit in its behalf and under its lawful authority. He has full personal knowledge of all of the matters and things hereinafter set forth.

2. Said Abraham Lincoln Book Shop, Inc., was duly authorized and created and exists under and by virtue of the laws of the State of Illinois and it is duly authorized to and does transact business in the State of Illinois and throughout the United States.

3. Among the purposes and businesses of said Abraham Lincoln Book Shop, Inc., is the buying, selling and dealing in and general appraisal of libraries, collections of rare books, autographs, letters, documents, drawings, prints, paintings, etchings, broadsides, historical objects, mementos and curiosities and other allied printed, pictorial and manuscript materials.

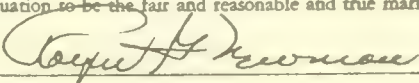
4. Said Abraham Lincoln Book Shop, Inc., its officers, employees and agents, and its predecessor companies have been doing business as appraisers of libraries, collections of rare books, autographs, letters, documents, drawings, printing, paintings, etchings, broadsides, historical objects, mementos and curiosities and other allied printed, pictorial and manuscript materials since the year 1933, in Illinois and in various other states of the United States of America and have been called upon as consultants in such matters by many of the leading private collectors, libraries, museums and public and private institutions of this country.

5. The said Abraham Lincoln Book Shop, Inc., through its employees, agents and officers did, from the sixth to the eighth day of April 19 69,
and on Nov. 3, Nov. 17 through 20, and December 8 19 69, examine the
PAPERS OF RICHARD MILHOUS NIXON, PART II

being the property of Richard Milhous Nixon
The White House
Washington, D. C. 20500

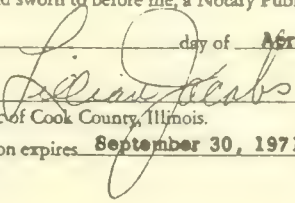
and found that the reasonable and fair and true market value thereof in money was
Five Hundred Seventy-Six Thousand and no hundredths ----- Dollars
(\$576,000.00) as appears from the annexed schedule attached hereto and made a part thereof.

This deponent verily believes the said valuation to be the fair and reasonable and true market value.



Subscribed and sworn to before me, a Notary Public, this

sixth day of April 19 70


Notary Public of Cook County, Illinois.

My commission expires September 30, 1971

The staff has interviewed Jan Shelton, who assisted Mary Livingston in designating the boxes, and she confirms this story in all essential respects.

Correspondence between Newman and Livingston

After the telephone conversation, Mr. Newman wrote a letter to Mrs. Livingston (Exhibit I-37) enclosing a list of the materials which had been discussed on the telephone. The letter stated, "This is being done to be certain that my records correspond with yours. . . ." The letter states that it referred to "material which were designated as a gift by Richard Milhous Nixon in 1969."

Mrs. Livingston said that after her activities of March 27, 1970, she prepared a memorandum from Dr. Reed to Dr. Rhoads (Exhibit I-38) describing what she had done. The memorandum specifically pointed out that the National Archives was asked to designate additional items for the gift and that the job was done within an hour. A routing slip attached to this memorandum dated March 31, 1970, contained a hand-written note by Dr. Rhoads saying that "as the Administrator was going out of town, I sent nothing over on this." She also said that she prepared a memorandum for the record (Exhibit I-39) listing what she and Mr. Newman had designated.

Mrs. Livingston said that on April 6, Mr. Newman called her about his letter of March 27 and, according to a handwritten note by Mrs. Livingston, stated that his letter of March 27 was the only deed of gift the National Archives will receive. (Mr. Newman told the staff that this is not an accurate account of what he said to Mrs. Livingston on the telephone that day. He said that he was indicating what the gift would be but that he at no time had anything to do with the deed and was unaware of the status of either the 1969 or the 1968 deeds.) Mrs. Livingston also stated that in this telephone call, Mr. Newman requested a letter from the National Archives acknowledging his March 27 letter and the receipt of the gift. Mrs. Livingston told the staff that Mr. Newman said it would be better for everyone, including the White House, "if all dealings on this point would stay between the two of us."

Mrs. Livingston said that she prepared a draft of a proposed letter to Mr. Newman to be signed by Dr. Reed. According to a GSA routing slip the letter was sent to Dr. Rhoads, since Dr. Reed was out of town, and then to the GSA General Counsel's office. Mrs. Livingston said that some time between the General Counsel's receipt of the draft and April 9, the General Counsel's office told Dr. Rhoads to have Mrs. Livingston prepare a response under her own signature and not to review it. (Neither Dr. Rhoads nor the personnel presently in the General Counsel's office recall that sequence of events, although the routing slips indicate that her proposed letter to be sent by Dr. Reed did go to the General Counsel's office.) Mrs. Livingston said that she then prepared a draft and sent a noncommittal letter to Mr. Newman (Exhibit I-40) which states, "The pre-Presidential papers of Richard M. Nixon listed briefly in your letter to me of March 27, 1970, are described in greater detail below." The letter further stated that the materials were delivered to the National Archives around March 27, 1969. The letter gave no indication, as Mrs. Livingston said was her intent, that the materials were being given to the National Archives.

On April 9, 1970, Mrs. Livingston said that Mr. Newman called her, and she read him her letter. Mrs. Livingston said that Mr. Newman told her that the response was sufficient. On April 10, 1970, Mrs. Livingston wrote a memorandum for the record (Exhibit I-41) in which she said that the Archivist was given copies of the various letters and memoranda in the National Archives files showing delivery of the papers on March 27, 1969. The memorandum states that the Archivist did approve of Mrs. Livingston's April 9 letter and that the letter was sent to Mr. Newman.

Preparation of tax return information on the gift of papers

Mr. DeMarco indicated that on March 28, 1970, he met with Arthur Blech at his office, and they went over a preliminary final draft of the tax return. He said he had called Mr. Blech the previous day after his conversation with Mr. Newman and informed him that the final appraised value of the gift was \$576,000 and that this figure should be used in computing the deduction on the 1969 return.

Mr. DeMarco said that on April 6, 1970, he received another telephone call from Mr. Newman in which Mr. Newman advised him that the final formal appraisal was finished and had been mailed to him. Mr. DeMarco indicated that he called Edward Morgan and reported this to him.

Mr. DeMarco said that Mr. Blech had advised him that he would need a summary of the gift as required by Treasury regulations. He said that on April 7, 1970, he dictated to his secretary a summary schedule to be attached to the tax return.

Mr. DeMarco indicated that on April 8, 1970, he received the final formal written appraisal from Mr. Newman which was "date stamped April 8, 1970." He said that he made a copy of the appraisal document and attached the copy together with the summary sheet setting forth the basic facts of the gift to the final tax return.

The return was signed in Washington by both President and Mrs. Nixon on April 10, 1970. (A more detailed discussion relating to the signing of the tax return and events leading up to it are discussed below with respect to the deed.)

Errors on Newman Appraisal

Presumably as a consequence of the hurried way in which the second Nixon gift, other than the general correspondence, was selected, there are some interesting errors on the Newman appraisal (Exhibit I-42). The number of boxes in each category is correct; however, the number of items in each category does not always correspond with the number of boxes, using the rule-of-thumb suggested by Mr. Newman to Mrs. Livingston that there were 500 items per box.

The number of items of general correspondence (414,000) is precisely equal to the number of boxes (828) multiplied by 500. However, there are 500 too many items listed under "Appearance File," 1,000 too few under "Correspondence Re Invitations and Turndowns," 1,000 too few under "Foreign Trip Files," and 13,500 too many under "Visit of Nikita S. Khrushchev." As a result, the number of items in the 1,176 boxes totals 600,000, which was the original target Mr. Newman gave to Mrs. Livingston, not 588,000, which is 1,176 x 500. It is interesting to note that the Khrushchev file, where the major error occurred, consists only of newspaper clippings.

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Exhibit I - 40

UNITED STATES OF AMERICA
GENERAL SERVICES ADMINISTRATION
National Archives and Records Service
Washington, D.C. 20408



April 9, 1970

Mr. Ralph G. Newman
18 East Chestnut Street
Chicago, Illinois 60611

Dear Mr. Newman:

The pre-Presidential papers of Richard M. Nixon listed briefly in your letter to me, of March 27, 1970, are described in greater detail below.

1. General Correspondence of the Vice President, Aandahl - Zwieng, Boxes 18-845. Alphabetical by person; organization or subject. 828 boxes
2. Appearance File, 1948-62, relating to domestic speaking engagements. Chronological 173 boxes
3. Correspondence of the Vice President regarding invitations and turndowns of invitations, circa 1954-61 56 boxes

V.P., Corres., Social invitations, turn-downs, acceptances and pending, 1954-61. Boxes 1-7
V.P., Invitation Lists, 1957, 1 box
V.P., Corres., Misc. Invitations and Turndowns, Ala.-Wyo., Boxes 1-3
V.P., Corres., Invitations & Turndowns, Ala.-N.M., Boxes 1-5
V.P., Corres., Invitations, Turndowns, & Pending, 1959, 1 Box
V.P., School & Foreign Invitations, Turndowns & Pending, 1958-59, 1 Box
V.P., Corres., Invitations, Turndowns & Pending, 1960, Boxes 1-17, Ala.-Wyo.
V.P. Invitation Summary Sheets, 1960, 1 Box
V.P., Corres., School, Foreign Radio & TV, Invitations, Turndowns & Pending, 1940, 1 Box

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2

V.P. Corres., Misc. Invitations & Turndowns,
1960, Ala.-Wyo., Boxes 1-2
V.P., Corres., Invitations, Turndowns &
Pending, 1958-60, Boxes 1-3
V.P., Corres., Invitations & Turndowns, 1961,
Ala.-Wis., Boxes 1-5
V.P., Corres., Invitations & Turndowns, Calif.,
1961, Boxes 1-3
V.P., Corres., Invitations & Turndowns. Calif.,
Schools and Indefinite, 1 Box
1960 Campaign, Corres., Invitations and Turn-
downs, Boxes 1-5

4. Foreign Trip Files of the Vice President 116 boxes

Far East, 1953	23 boxes
(including Far East speeches, Row 5, 1 box)	
Far East, 1956	3 boxes
Africa, 1957	11 boxes
Austria, 1956	3 boxes
South America, 1958	35 boxes
London, 1958	7 boxes
U.S.S.R., 1959	23 boxes
Miscellaneous	1 box

5. Visit of Khrushchev to U.S. 3 boxes

Total 1,176 boxes

The above listed material was delivered to the National
Archives March 26-27, 1969.

Mary Walton Livingston
MARY WALTON LIVINGSTON

On April 3, 1970, he said that he called DeMarco and told him that he was preparing an appraisal document and that he would mail it out shortly. On April 6, 1970 he called Mrs. Livingston at the Archives. He said he did not say in that conversation that his letter to the Archives would be the only deed of gift. He said that he may have said, "All dealings on this point should stay between the two of us," but meant by his comment that the Archives should not make any public announcement of the President's gift. He meant any publicity on this matter should come from the White House. He said he realized that Mrs. Livingston would have to report the fact of the appraisal to Drs. Reed and Rhoads at the Archives.

On April 7, 1970 he called DeMarco to tell him that the appraisal was in the mail. He said that he received a telephone call from Mrs. Livingston on April 9, who read to him her reply to his letter of March 27. He said that he agreed her letter was sufficient.

Newman said that he mailed his appraisal to DeMarco, but heard nothing further from DeMarco. He said he did not receive a copy of the deed of gift. He said he assumed the appraisal was for tax purposes but was not even told that a deed of gift existed for 1969 until he received a telephone call from Nick Kotz of the Washington Post in June of 1973.

9. Letter of Access dated April 22, 1970.

Newman said that he never received any letter of access. He said that they went to the National Archives directly, as far as he could

ently, discarded or lost. Furthermore, Herbert Kalmbach, who participated in most of the meeting with Messrs. Morgan and DeMarco, does not recall having heard any discussion of the gift or the deed; and John Ehrlichman, Mr. Morgan's boss, does not recall discussing the deed with him. Finally, the staff has found no evidence to corroborate Mr. DeMarco's statement that he had a copy of the 1968 deed in April 1969.

C. 1969 ARCHIVES CORRESPONDENCE REGARDING A 1969 DEED

The staff has requested that both the White House and the National Archives furnish it with any letters or memoranda written in 1969 that relate to a deed for the second gift for Nixon papers. The staff has received no letters or memos written in 1969 that contain any reference to a 1969 deed. As discussed in Section A above, material written by the White House about the 1968 gift made frequent references to the 1968 deed.

Edward Morgan wrote a memo to Dr. Reed on September 12, 1969 (Exhibit I-48). The memo mentions the papers, but contains no reference to a 1969 deed or to a deeded portion of the papers.

D. PREPARATION AND SIGNING OF THE SECOND DEED OF GIFT, APRIL 1970

DeMarco's Written Statement.—Mr. DeMarco's statement contains the following description of the preparation and signing of the deed of gift:

"On April 7, 1970 I dictated to my secretary the summary schedule for attachment to the tax return. It was at this time, upon examining the summary schedule and examining the Schedule 'A' which I had instructed my secretary to prepare on March 27, 1970, I noticed that the typewriting on these documents and the color and texture of the paper were so substantially different from the type and the paper used on the draft deed prepared in April of 1969, that I instructed her to retype the entire chattel deed on the new typewriter which we had been using since mid-1969. (The ribbon copy of the retyped chattel deed and the draft of The Richard Nixon Foundation Articles of Incorporation, typed in April 1969, are available for comparison as to type and paper and will be submitted to you for examination.) After it had been retyped in its entirety, I caused two xerox copies to be made, and it was my plan to have the new ribbon copy and two xerox copies re-executed by Mr. Morgan when I saw him in Washington.

"On April 8, 1970 I received in the morning mail the final formal written appraisal of Mr. Newman which was date stamped April 8, 1970. I caused several xerox copies of the original appraisal to be made. I then proceeded to the offices of Arthur Blech, showed him the original appraisal and the various xerox copies I had made. We then assembled the final tax return and attached xerox copies of the final formal Newman appraisal and xerox copies of the summary sheet setting forth the basic points of the gift. We then assembled the final tax return for execution.

"On April 9, 1970 I traveled to Washington, D.C. On April 10, 1970 I met with Edward L. Morgan at his office at the Executive

Office Building at about 10:00 a.m. I presented to Mr. Morgan the original ribbon copy and two xerox copies of the retyped chattel deed for his re-execution. I do not have any distinct recollection as to whether I had affixed my signature to the copies and the notary seal prior to leaving Los Angeles, or whether I affixed same in Mr. Morgan's office. However, I feel that since my signature appears to have been signed with a felt tip pen, and since I normally do not carry a felt tip pen on my person, I could have signed the documents in Los Angeles before I left. After completion of the execution by him, I think I left him at least one copy, and I retained the ribbon copy in my file. I do not recall that we had any substantial discussion at the time of the re-execution, except that we concurred in the proposition that it was a restatement of that which we had done in California in April of 1969 but with the more itemized and detailed appraisal attached and that it was a good idea to clean up the documentation. I expressed my concern that the original deed not be used because of the difference in type on the typewriters and different quality and color of paper."

Thus, Mr. DeMarco acknowledges that the final copies of the deed for the second gift of papers were signed by Edward Morgan on April 10, 1970. He gave the same story in his sworn statement in California.

DeMarco Staff Interview.—Mr. DeMarco notarized the deed signed by Mr. Morgan on April 10, 1970, as of the date April 21, 1969. (The deed itself was dated March 27, 1969.) In his staff interview, Mr. DeMarco could not recall whether he notarized the deed just before or just after Mr. Morgan signed it.

DeMarco California Deposition.—In his sworn statement in California, Mr. DeMarco told essentially the same story he told in his written statement to the staff.

Kueny California Deposition.—In a sworn statement before the California Secretary of State, Mr. DeMarco's secretary, LaRonna Kueny, stated that she typed at least two copies of the deed to the second gift, the first one before April 21, 1969, and the second one either in late 1969 or early 1970. She said that the second deed was similar to the first, except that the first included no Schedule A and that they were typed on different typewriters. In both cases, she said she typed a notary acknowledgement and an affidavit that Mr. Morgan had the authority to sign. She said she cannot remember whether she typed the second deed from a draft with strikeovers or from a clean manuscript. Mrs. Kueny also asserted that she typed the original deed before Mr. Morgan arrived in Los Angeles on April 21, 1969. Exhibit I-52 is Mrs. Kueny's sworn statement to the Internal Revenue Service, which was given to the staff by Mr. DeMarco.

Morgan Staff Interview.—Mr. Morgan acknowledges that the signature on the deed that Mr. DeMarco now says was signed on April 10, 1970, is his handwriting. However, in his interview, he said he did not recall signing any deed a second time, nor did he recall signing anything on April 10, 1970. He said, however, that he cannot deny having signed it then a second time. The staff understands that Mr. Morgan now asserts that he remembers signing the deed a second time. Of course, if Mr. DeMarco's story given in his first staff interview is

information regarding his client, and the problems with communication which would occur in the future.

9. January, 1970 Meeting with Ehrlichman.

In January, 1970, DeMarco met at San Clemente with Ehrlichman and Kalmbach. Ehrlichman asked Kalmbach to do some research on the tax consequences of setting up a certain form of trust, and was interested in how one would obtain a power of appointment on such a trust. Ehrlichman told DeMarco that there was a trust document at Mudge, Rose, Guthrie & Alexander which DeMarco should obtain. DeMarco wrote Alexander for a copy of this document, but received a reply which in effect said, "forget it." Ehrlichman, upon being informed of this by DeMarco, also told DeMarco to forget it, and said that he would "take care of it."

10. The Signing of the Deed on April 10, 1970.

DeMarco stated that after Newman had telephoned him and had given him the description of the items given by the President to the National Archives on March 27, he had his secretary type the description, and then noted that there was a difference in type style and quality of paper. He had his secretary retype the final form of deed on the 27th of March or April 1, 1970. We asked DeMarco why he thought it was necessary to have the deed retyped. He said that it was for "purely esthetic" reasons. He said that he regarded this as an historical document which would

eventually go to the Nixon Foundation, and that he wanted the document to be in good form. We asked him if he ordinarily keeps the originals of documents which he recopies. He says, "Ordinarily, I don't know." As to what happened to the April 21, 1969 version of the deed, he said, "I think I threw it away."

DeMarco said that the final form of the deed and the attached documents were signed by Morgan at the White House on April 10, 1970. At that time, DeMarco said, he said to Morgan, "Let's give the President a better looking document." According to DeMarco, Morgan said, "Okay." DeMarco said that he left one copy of the deed with Morgan and brought two copies, including the original, back to Los Angeles. Later, he mailed one copy to Morgan for Morgan's own files. The original instrument was brought to Los Angeles, he said, so that he could give it to the Foundation. It subsequently was delivered to Garment at his request, but was returned to DeMarco in preparation for interviews on the gift of papers matter. In the interview Mr. Woods and I were shown the executed ribbon copy of the deed and its attachments.

11. April 10, 1970 Signing of the Tax Return.

DeMarco said that Roger Barth was in Morgan's office on the morning of April 10, 1970, and went over with DeMarco the items on the President's 1969 tax return. DeMarco told us he distinctly remembers this incident because he was worried what he would do if at this late time an error in the tax return was found by Barth. Although Barth reviewed the President's tax

1 A Yes, I do.

2 Q Do you know whether you typed the original of this
3 document?

4 A Yes; I did.

5 Q You did?

6 A Uh-huh.

7 Q And do you know when you typed it?

8 A I typed it in the early part of 1969 -- that is,
9 before June of 1969.

10 Q The major portion of Exhibit 1 purports to be a
11 chattel deed from Richard Nixon to the United States of
12 America. Did you type one such deed, or did you type more
13 than one such deed?

14 A I typed more than one.

15 Q How many such deeds did you type?

16 A I don't recall.

17 Q But you do recall typing more than one?

18 A Yes, I do.

19 Q So would you say at least two?

20 A At least two, uh-huh. I was trying to recall whether
21 I typed more than two, but I really don't know.

22 Q So it could have been two, or it could have been
23 more than two?

24 A Three or four.

25 Q Do you know when you typed at least one other
26 deed, since you have said that you typed at least one other
27 deed?

28 A Uh-huh.

1 Q Do you know what the date of that was?

2 A No, I don't recall.

3 Q Was it also prior to June of 1969?

4 A No. No.

5 Q It was after June of 1969?

6 A Yes, it was.

7 Q Was it in 1970?

8 A I don't recall whether it would have been the latter
9 part of 1969 or the first part of 1970.

10 Q But it could have been one of those two?

11 A Yes.

12 Q During the period of 1969-1970 -- well, strike that.
13 During the time when you were in the Century City
14 office, which I believe you said was prior to June of 1969 --

15 A June or July.

16 Q June or July. Did you use one typewriter in your
17 work?

18 A Yes.

19 Q And did you use one typewriter, let us say, from
20 the beginning of 1969 through the time that you moved?

21 A No; we bought new typewriters.

22 Q You bought new typewriters?

23 A Yes.

24 Q When did you buy the new typewriters?

25 A That is what I was trying to recall. If I can
26 introduce my exhibits.

27 Q Certainly.

28 A Mr. Quinn asked me if I had anything in my possession

- 20 -

of the Audit Section of the IRS, was there to receive the President's return. Barth and Walsh looked over the return, checked to see that it was signed, put it back in its envelope, and left.

About two weeks later in April, DeMarco received a telephone call from Barth, who said the return had been checked and approved, and that a refund check was being issued on that day.

12. Descriptive Sheet Attached to Return.

We asked DeMarco who had written the descriptive sheet attached to the return, which gives a brief description of the gift and states that there are no restrictions on the gift. DeMarco says that Blech told him it was a required schedule, that DeMarco wrote it out in longhand and gave it to Blech. DeMarco said that he thought that either he or Blech had been given the President's 1968 return, but DeMarco doesn't think that he (DeMarco) had the 1968 return before doing the 1969 return. DeMarco said that he drafted the descriptive sheet because Blech said that it was required, and in response to the required questions. He did not base it on a similar sheet included in the 1968 return. DeMarco stated that he had had no conversations with Richard Ritzel on the subject of the gift of papers or on the way the gift was reflected in the tax return.

returns, including the section for charitable contributions deductions, since he knew how much of a charitable contribution would be deductible based on the President's income for 1969. Based on the conversation with DeMarco the previous May, he had prepared an Exhibit B describing the charitable contributions, which valued the papers at \$550,000. When he told DeMarco that he needed an appraisal, it was then that he first heard of Ralph Newman, and DeMarco said that the appraisal would be forthcoming. (Blech told us that he must have known about the Abraham Lincoln Book Shop in February, 1970, when he saw the check drawn on the President's account to the Abraham Lincoln Book Shop for the appraisal of the 1968 papers. He said he did not, at the time, know that the appraiser's name was Newman.)

He said that DeMarco called him in late March, and gave him Newman's appraised value of \$576,000. Blech tore up the draft Exhibit B and drew up a new one using the figure of \$576,000 (reproduced at

p. A-700 of the Joint Committee report). He said that he told DeMarco that IRS regulations required a summary sheet for this type of contribution and told DeMarco that he wanted covered. He said that DeMarco filled in the details and gave it back to Blech for inclusion in the

tax return. Blech said that once the appraisal itself was received he and DeMarco attached it to the return. He said he signed the return as preparer and stamped a second copy with his "customer's copy" stamp. He said that DeMarco asked him not to stamp the copy and that he redid a clean first page and substituted it for the stamped

A-699

*Dr. M. J. ...
Hygiene*

RICHARD M. AND PATRICIA R. NIXON
CHARITABLE CONTRIBUTION CLAIMED
TAXABLE YEAR ENDING DECEMBER 31, 1969

1. Donee: General Services Administrator,
United States of America
2. Date of Gift: March 27, 1969
3. Description of Gift: Personal papers, manuscripts
and other materials.
4. Market Value: Market value at time of gift was
\$576,000. This valuation is based
upon the written appraisal of
Ralph Geoffrey Newman
Fine Arts Appraiser
18 East Chestnut Street
Chicago, Illinois
5. Restrictions: None. The gift was free and clear,
with no rights remaining in the
taxpayer.

ently, discarded or lost. Furthermore, Herbert Kalmbach, who participated in most of the meeting with Messrs. Morgan and DeMarco, does not recall having heard any discussion of the gift or the deed; and John Ehrlichman, Mr. Morgan's boss, does not recall discussing the deed with him. Finally, the staff has found no evidence to corroborate Mr. DeMarco's statement that he had a copy of the 1968 deed in April 1969.

C. 1969 ARCHIVES CORRESPONDENCE REGARDING A 1969 DEED

The staff has requested that both the White House and the National Archives furnish it with any letters or memoranda written in 1969 that relate to a deed for the second gift for Nixon papers. The staff has received no letters or memos written in 1969 that contain any reference to a 1969 deed. As discussed in Section A above, material written by the White House about the 1968 gift made frequent references to the 1968 deed.

Edward Morgan wrote a memo to Dr. Reed on September 12, 1969 (Exhibit I-48). The memo mentions the papers, but contains no reference to a 1969 deed or to a deeded portion of the papers.

D. PREPARATION AND SIGNING OF THE SECOND DEED OF GIFT, APRIL 1970

DeMarco's Written Statement.—Mr. DeMarco's statement contains the following description of the preparation and signing of the deed of gift:

"On April 7, 1970 I dictated to my secretary the summary schedule for attachment to the tax return. It was at this time, upon examining the summary schedule and examining the Schedule 'A' which I had instructed my secretary to prepare on March 27, 1970, I noticed that the typewriting on these documents and the color and texture of the paper were so substantially different from the type and the paper used on the draft deed prepared in April of 1969, that I instructed her to retype the entire chattel deed on the new typewriter which we had been using since mid-1969. (The ribbon copy of the retyped chattel deed and the draft of The Richard Nixon Foundation Articles of Incorporation, typed in April 1969, are available for comparison as to type and paper and will be submitted to you for examination.) After it had been retyped in its entirety, I caused two xerox copies to be made, and it was my plan to have the new ribbon copy and two xerox copies re-executed by Mr. Morgan when I saw him in Washington.

"On April 8, 1970 I received in the morning mail the final formal written appraisal of Mr. Newman which was date stamped April 8, 1970. I caused several xerox copies of the original appraisal to be made. I then proceeded to the offices of Arthur Blech, showed him the original appraisal and the various xerox copies I had made. We then assembled the final tax return and attached xerox copies of the final formal Newman appraisal and xerox copies of the summary sheet setting forth the basic points of the gift. We then assembled the final tax return for execution.

"On April 9, 1970 I traveled to Washington, D.C. On April 10, 1970 I met with Edward L. Morgan at his office at the Executive

Office Building at about 10:00 a.m. I presented to Mr. Morgan the original ribbon copy and two xerox copies of the retyped chattel deed for his re-execution. I do not have any distinct recollection as to whether I had affixed my signature to the copies and the notary seal prior to leaving Los Angeles, or whether I affixed same in Mr. Morgan's office. However, I feel that since my signature appears to have been signed with a felt tip pen, and since I normally do not carry a felt tip pen on my person, I could have signed the documents in Los Angeles before I left. After completion of the execution by him, I think I left him at least one copy, and I retained the ribbon copy in my file. I do not recall that we had any substantial discussion at the time of the re-execution, except that we concurred in the proposition that it was a restatement of that which we had done in California in April of 1969 but with the more itemized and detailed appraisal attached and that it was a good idea to clean up the documentation. I expressed my concern that the original deed not be used because of the difference in type on the typewriters and different quality and color of paper."

Thus, Mr. DeMarco acknowledges that the final copies of the deed for the second gift of papers were signed by Edward Morgan on April 10, 1970. He gave the same story in his sworn statement in California.

DeMarco Staff Interview.—Mr. DeMarco notarized the deed signed by Mr. Morgan on April 10, 1970, as of the date April 21, 1969. (The deed itself was dated March 27, 1969.) In his staff interview, Mr. DeMarco could not recall whether he notarized the deed just before or just after Mr. Morgan signed it.

DeMarco California Deposition.—In his sworn statement in California, Mr. DeMarco told essentially the same story he told in his written statement to the staff.

Kueny California Deposition.—In a sworn statement before the California Secretary of State, Mr. DeMarco's secretary, LaRonna Kueny, stated that she typed at least two copies of the deed to the second gift, the first one before April 21, 1969, and the second one either in late 1969 or early 1970. She said that the second deed was similar to the first, except that the first included no Schedule A and that they were typed on different typewriters. In both cases, she said she typed a notary acknowledgement and an affidavit that Mr. Morgan had the authority to sign. She said she cannot remember whether she typed the second deed from a draft with strikeouts or from a clean manuscript. Mrs. Kueny also asserted that she typed the original deed before Mr. Morgan arrived in Los Angeles on April 21, 1969. Exhibit I-52 is Mrs. Kueny's sworn statement to the Internal Revenue Service, which was given to the staff by Mr. DeMarco.

Morgan Staff Interview.—Mr. Morgan acknowledges that the signature on the deed that Mr. DeMarco now says was signed on April 10, 1970, is his handwriting. However, in his interview, he said he did not recall signing any deed a second time, nor did he recall signing anything on April 10, 1970. He said, however, that he cannot deny having signed it then a second time. The staff understands that Mr. Morgan now asserts that he remembers signing the deed a second time. Of course, if Mr. DeMarco's story given in his first staff interview is

A-163

Exhibit I - 10

M E M O R A N D U M

To: Dr. Laurence Woodworth
Joint Committee on Internal Revenue Taxation

From: Frank DeMarco, Jr.

Re: Review of 1969-1972 Income Tax Returns
of President and Mrs. Richard M. Nixon

There follows herewith a brief statement of my best recollection at this time of certain of the events surrounding the activities of my office in connection with the preparation and filing of the subject income tax returns. Since some of the events occurred approximately five and four years ago, my recollection is, in some instances, not clear. In those instances where I have been able to refer to some other physical fact or event certain upon which to base my recollection, I have so stated.

I.

1969 Gift of Pre-Presidential Papers

My law firm's involvement in the personal business and tax affairs of the President commenced in early March 1969 when we were advised that the President desired to find a property in the Southern California beach area to make his home upon his retirement from the Presidency. In that connection, Herb Kalmbach, of this office, worked on the assignment and reported directly to John Ehrlichman. In the course of that assignment, Ehrlichman advised Kalmbach that the President desired to have other personal legal affairs handled in California, and Ehrlichman asked Kalmbach if our firm would undertake such engagements.

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copies of the original appraisal to be made. I then proceeded to the offices of Arthur Blech, showed him the original appraisal and the various xerox copies I had made. We then assembled the final tax return and attached xerox copies of the final formal Newman appraisal and xerox copies of the summary sheet setting forth the basic points of the gift. We then assembled the final tax return for execution.

On April 9, 1970 I traveled to Washington, D.C. On April 10, 1970 I met with Edward L. Morgan at his office at the Executive Office Building at about 10:00 a.m. I presented to Mr. Morgan the original ribbon copy and two xerox copies of the retyped chattel deed for his re-execution. I do not have any distinct recollection as to whether I had affixed my signature to the copies and the notary seal prior to leaving Los Angeles, or whether I affixed same in Mr. Morgan's office. However, I feel that since my signature appears to have been signed with a felt tip pen, and since I normally do not carry a felt tip pen on my person, I could have signed the documents in Los Angeles before I left. After completion of the execution by him, I think I left him at least one copy, and I retained the ribbon copy in my file. I do not recall that we had any substantial discussion at the time of the re-execution, except that we concurred in the proposition that it was a restatement of that which we had done in California in April of 1969 but with the more itemized and detailed appraisal attached and that it was a good idea to clean up the documentation. I expressed my

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concern that the original deed not be used because of the difference in type on the typewriters and different quality and color of paper. A copy of the final form of chattel deed as executed by Mr. Morgan on or about April 10, 1970 is attached as Exhibit "4".

I have no knowledge of how or in what manner a signed copy of the chattel deed was delivered to the General Services Administration or the National Archives. The ribbon copy of the re-executed chattel deed stayed in my files until on or about October of 1973 at which time I mailed it to Leonard Garment at the White House Counsel's office. It was redelivered to me on January 17, 1974.

On April 10, 1970 at approximately noon. I met with the President in his office for the purpose of reviewing the tax return and causing it to be executed. We went over the tax return. I went through the pages of the return and showed him the appraisal as prepared by Mr. Newman. I also pointed out the "bottom line" refund item and explained that he would have to file a declaration of estimated tax for 1970. He then executed the tax return and the Declaration of Estimated Tax for 1970 in my presence. It is my recollection that I thereupon signed the return and dated same. The President then rang Mrs. Nixon and arranged for me to go to the second floor of the White House to meet her for the purpose of having her execute the tax return. I was with the President for approximately thirty minutes during which period we had coffee and discussed the upcoming California

A-159

Exhibit I - 9



ASSISTANT SECRETARY

THE DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

August 14, 1973

MEMORANDUM FOR: MR. DOUGLAS PARKER

FROM: EDWARD L. MORGAN

SUBJECT: President's Papers

Attached is a memorandum setting forth my
basic recollection of the facts regarding the
President's papers.

Attachment

A-162

- 3 -

On Monday, April 21, I met Mr. Kalmbach and Mr. DeMarco at the Century Plaza, where I was staying, and drove to the Newport Beach area. I recall that we drove to San Clemente and looked at the property which is now the President's residence there. I recall spending some time at Mr. Kalmbach's law office discussing and working on all of the matters on which I was in California. This may have even included the question of the historical site status for Yorba Linda.

There is absolutely no question in my mind that I signed the deed of gift for the President at that time. The thing that I do not remember is whether or not there was any particular schedule attached to the deed at that time, and if so, its contents.

Since I had not personally supervised the transfer or the inventory of the materials subject to the gift, the schedule would have really meant very little to me anyway.

1970

I have no specific recollection of an inquiry from GSA about the whereabouts of the deed. I do think I remember calling Frank DeMarco about it, but I'm not sure. I assume that he mailed it to me and I gave it to GSA, or he mailed it to GSA directly. Nonetheless, I have no reason to dispute anyone else's recollection of the matter.

I would add only that I have had, and continue to have, the highest personal and professional regard for Mr. Ritzel, Mr. Tannian, Mr. Kalmbach and Mr. DeMarco.

Office Building at about 10:00 a.m. I presented to Mr. Morgan the original ribbon copy and two xerox copies of the retyped chattel deed for his re-execution. I do not have any distinct recollection as to whether I had affixed my signature to the copies and the notary seal prior to leaving Los Angeles, or whether I affixed same in Mr. Morgan's office. However, I feel that since my signature appears to have been signed with a felt tip pen, and since I normally do not carry a felt tip pen on my person, I could have signed the documents in Los Angeles before I left. After completion of the execution by him, I think I left him at least one copy, and I retained the ribbon copy in my file. I do not recall that we had any substantial discussion at the time of the re-execution, except that we concurred in the proposition that it was a restatement of that which we had done in California in April of 1969 but with the more itemized and detailed appraisal attached and that it was a good idea to clean up the documentation. I expressed my concern that the original deed not be used because of the difference in type on the typewriters and different quality and color of paper."

Thus, Mr. DeMarco acknowledges that the final copies of the deed for the second gift of papers were signed by Edward Morgan on April 10, 1970. He gave the same story in his sworn statement in California.

DeMarco Staff Interview.—Mr. DeMarco notarized the deed signed by Mr. Morgan on April 10, 1970, as of the date April 21, 1969. (The deed itself was dated March 27, 1969.) In his staff interview, Mr. DeMarco could not recall whether he notarized the deed just before or just after Mr. Morgan signed it.

DeMarco California Deposition.—In his sworn statement in California, Mr. DeMarco told essentially the same story he told in his written statement to the staff.

Kueny California Deposition.—In a sworn statement before the California Secretary of State, Mr. DeMarco's secretary, LaRonna Kueny, stated that she typed at least two copies of the deed to the second gift, the first one before April 21, 1969, and the second one either in late 1969 or early 1970. She said that the second deed was similar to the first, except that the first included no Schedule A and that they were typed on different typewriters. In both cases, she said she typed a notary acknowledgement and an affidavit that Mr. Morgan had the authority to sign. She said she cannot remember whether she typed the second deed from a draft with strikeouts or from a clean manuscript. Mrs. Kueny also asserted that she typed the original deed before Mr. Morgan arrived in Los Angeles on April 21, 1969. Exhibit I-52 is Mrs. Kueny's sworn statement to the Internal Revenue Service, which was given to the staff by Mr. DeMarco.

Morgan Staff Interview.—Mr. Morgan acknowledges that the signature on the deed that Mr. DeMarco now says was signed on April 10, 1970, is his handwriting. However, in his interview, he said he did not recall signing any deed a second time, nor did he recall signing anything on April 10, 1970. He said, however, that he cannot deny having signed it then a second time. The staff understands that Mr. Morgan now asserts that he remembers signing the deed a second time. Of course, if Mr. DeMarco's story given in his first staff interview is

correct, Mr. Morgan's signing on April 10, 1970, would not have been a re-execution.

E. DELIVERY OF 1969 DEED TO GENERAL SERVICES ADMINISTRATION

The staff has not been able to determine the precise date on which a signed xerox copy of the 1969 deed was delivered to the General Services Administration, but it has some information that enables it to narrow down the period during which delivery occurred.

On April 6, 1970, the Archives sent a copy of Ralph Newman's letter of March 27, 1970, to the Office of the General Counsel of the General Services Administration. This copy has a note attached to it in the handwriting of Hart Mankin, the General Counsel. It is dated April 10, 1970, and states, "Ed Morgan says there is a chattel deed—will furnish copy. Now in California."

On April 22, 1970, Mr. Morgan prepared a right of access (Exhibit I-49) to Mr. Newman "pursuant to Chattel Deeds from Richard M. Nixon to the United States of America, dated December 30, 1968, and March 27, 1969, respectively." This was forwarded to Dr. Reed by Mr. Morgan with a covering memo on April 24, 1970. The memo is stamped "April 27, 1970," which is the day it was received by Dr. Reed.

Staff Analysis.—Based on these two documents and interviews with the people involved, the staff believes that the deed for the second gift of papers was picked up from Mr. Morgan's office by a representative of the General Services Administration sometime between April 10, 1970, and April 22, 1970.

F. SUBSEQUENT TRAVELS OF THE DEED

Return of the Deed to the White House, September 1971.—In an interview with the staff, Richard Jacobs, Dr. Reed's deputy at the Office of Presidential Libraries, stated that there was some discussion of the deed in the General Counsel's Office of the General Services Administration in 1970. On July 10, 1970, the General Counsel, Hart Mankin, sent a memo to Mr. Morgan (Exhibit I-50) asking to discuss the deed. In an interview, William Casselman, the GSA General Counsel in 1971-73, said that when he took over in that job in June 1971, his predecessor, Mr. Mankin, told him that there were two "technical issues" to be resolved about the deed. These were that Mrs. Nixon had not signed the deed and that the President had not signed it.

Mr. Jacobs said that he received a call from Dapray Muir, who was on the staff of John W. Dean III, the White House Counsel, in late August or early September 1971. Mr. Jacobs said that Mr. Muir wanted to discuss how previous Presidents had donated their papers and was concerned about the lack of control over the records of Presidential task forces and commissions. Mr. Jacobs said he met with Mr. Muir several times to discuss these matters, along with Mr. Casselman and his deputy, Bill Barth.

Both Mr. Jacobs and Mr. Casselman said that at one of these meetings on September 10, 1971, Mr. Casselman gave Mr. Muir the deed and asked him to look into the problem of President and Mrs. Nixon's failure to sign it. Both Mr. Jacobs and Mr. Casselman said that Mr. Muir did not expect to receive the deed at the meeting.

Morgan vaguely recalls a meeting with Newman at the end of October or beginning of November, 1969. Morgan remembers the Newman letter of November 7, 1969 (p. A-233). Newman was concerned about particularly sensitive papers and he came by Morgan's office and said that he was concerned that these sensitive papers should be in the vault area. However, Morgan does not remember the appraisal attached as part of the November 7 letter. Morgan does not recall receiving the appraisal although he must have gotten it and felt that a \$2 million gift had been made. He does not recall discussing the letter and the appraisal. At that time he was "on the road" much of the time with Richard Nathan, discussing welfare reform.

Morgan does not recall calls from DeMarco to get Morgan to get Newman working on the papers.

As for the 1969 Tax Reform Act Morgan recalls no discussions about the change of the tax law, except talk in the White House mess that the change in the law would adversely affect the President's interests. Morgan knows nothing about the events of March 27, 1970 and the Newman and DeMarco telephone call in which DeMarco told Newman that a gift had been made.

As for April 10, 1970 Morgan remembers basically nothing. He does not recall signing a deed at a meeting with DeMarco and Kalmbach in Washington. Morgan has a recollection that he was called out of a meeting by his secretary to go to his office. He saw DeMarco there, who showed him a deed, saying "we have to have more copies of this." Morgan said, "Okay," signed the deeds and returned to the meeting.

7. Staff Analysis of Facts Relating to the Deed Dated March 27, 1969, for the Second Gift of Papers

The President's counsel claimed that the date of the delivery of the pre-Presidential papers to the National Archives on March 27, 1969, was the date of the second gift of papers of President Nixon, which were claimed as a charitable contribution deduction on his 1969 tax return. Although a deed exists and is dated March 27, 1969, it was not signed by President Nixon but rather by Edward L. Morgan, the Deputy Counsel to the President, and was not delivered to the National Archives until after April 10, 1970. The copy of the deed that was furnished to the National Archives is a duplicate original (that is, a photostat of the original deed with an original signature). Because the deed contains substantial restrictions on access to and use of the papers, the staff believes that delivery of a signed deed was necessary to complete the gift.

The documents relating to the deed consist of the deed itself signed by Edward L. Morgan, including the notarization of the signature, dated April 21, 1969 (the Notary Public was Frank DeMarco, Jr. who was the President's attorney at that time); an affidavit signed by Edward L. Morgan that he had the authority to sign the deed (which was also notarized by Frank DeMarco); and Schedule A to the deed which listed the materials conveyed by the chattel deed. These are included in the Appendix as Exhibit I-44.

Questions have been raised whether this deed was ever signed in 1969. The staff questioned this fact when it first learned certain facts relating to the Schedule A that was attached to the deed. It is clear that the Schedule A could not have been prepared until after March 27, 1970, because it was not until then that a list ever existed of exactly what was to be given. It was brought to the attention of the staff that the duplicate original deed at the National Archives had similar photostating marks as the Schedule A, indicating that the deed and the Schedule A were both prepared at the same time. Thus, it became clear to the staff at an early date that the signature of Mr. Morgan could not have been made on this duplicate original prior to March 27, 1970.

Subsequent to this fact being made known to the staff, the State of California conducted an investigation into the propriety of Mr. DeMarco's actions with respect to his notarizations. Additional questions were raised as a result of the depositions which have been made public that were taken of Mr. DeMarco and his secretary, LaRonna Kueny.

The following is an analysis of the facts, documents, and any other information furnished to the staff relating to the deed for the second gift of papers dated March 27, 1969. In order to show the contrast in the manner in which the 1968 chattel deed was used, the staff briefly sets forth the preparation and use of the 1968 deed.

A. 1968 CHATTEL DEED

The deed to President-elect Nixon's 1968 gift of papers (Exhibit I-1), which was signed by him, was delivered to a representative of the General Services Administration, Peter S. Iacullo in New York on December 30, 1968. Mr. Iacullo countersigned the deed opposite Mr. Nixon's signature and wrote on the deed next to his signature

A-10

Exhibit I - 2

LAW OFFICES

KALMBACH, DeMARCO, KNAPP & CHILLINGWORTH

HERBERT W. KALMBACH
FRANK D. MARCO, JR.
SHERWOOD C. CHILLINGWORTH
HAROLD SERIAL
ALEXANDER BOWNE
RICHARD S. BARNER
ROBERT H. MORRISON
RICHARD C. OFFERBACH
THOMAS D. PICKERMAN
ALAN R. WOLEN
LARRY S. THRAILL
TERRY L. RHODES
GARLET C. FROST
RALPH J. MORGAN
WESTON L. JOHNSON
BRUCE E. HARTWORTH
G. DEAN WHITE
ROBERT M. FORDMAN, JR.
RICHARD S. CROVELL
F. SCOTT JACOBSON
HOWARD S. SLUSHER
THOMAS J. BARRACKER, JR.
JACK B. ANDERSON

46TH FLOOR NORTH TOWER - ATLANTIC RICHFIELD PLAZA
56 SOUTH FLOWER STREET
LOS ANGELES, CALIFORNIA 90071
TELEPHONE (213) 660-1281

NEWPORT CENTER OFFICE
SUITE 900 - NEWPORT FINANCIAL PLAZA
850 NEWPORT CENTER DRIVE
NEWPORT BEACH, CALIFORNIA 92660
TELEPHONE (714) 644-4444

August 22, 1973

OF COUNSEL
JAMES R. KNAPP
WILLIAM P. HALLER

Coopers and Lybrand
1251 Avenue of the Americas
New York, New York 10020

Gentlemen:

In connection with your engagement to examine and report on the statement of assets and liabilities as of May 31, 1973 of our clients Richard M. Nixon and Patricia R. Nixon, you have requested our opinion respecting the gift of certain pre-Presidential private papers of Richard M. Nixon to the United States of America on March 27, 1969 and the treatment of such contribution as a deductible item for income tax purposes as claimed on the Federal income tax returns filed by the clients for the years 1969 through 1972.

In connection therewith, we have made a factual examination of the circumstances of the transaction, the law applicable thereto and such other and further matters as we have deemed pertinent to the inquiry and to the delivering of this opinion, and based upon such examination and the applicable law, it is our opinion that on March 27, 1969, the client made a valid gift to the United States of America of certain of his personal private papers having at the date of such gift a fair market value of \$576,000; that deductions claimed by the said taxpayer on his Federal income tax returns for the calendar year 1969 were in all respects proper and valid; that the facts and circumstances of the gift were fully disclosed in the 1969 return as filed; that subsequent deductions for those allocable portions of the market value of the gift claimed by the taxpayer in subsequent federal income tax returns filed for the calendar years 1970, 1971 and 1972 were and are proper and valid deductions against income.

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LAW OFFICES

KALMBACH, DeMARCO, KNAPP & CHILLINGWOLLE

Coopers and Lybrand
April 22, 1973
Page Two

Our examination of the facts and circumstances of the transaction show that immediately prior to March 27, 1969, the taxpayer declared an intention to make a gift of the subject private papers to the people of the United States and that at his direction, his personal counsel, Edward L. Morgan, directed and supervised the removal of such private papers from the taxpayer's personal dominion and control at the Executive Office Building, Washington, D.C., and caused the same to be delivered to the National Archives in Washington, D.C. on said date where said materials have remained for an uninterrupted period. At all times subsequent to March 27, 1969, the materials constituting the subject matter of the gift were under the exclusive dominion and control of the National Archives. → On or about April 6, 7 and 8, 1969, the material constituting the subject matter of the gift was examined and segregated from other materials by an appraiser duly appointed by the taxpayer to appraise the market value of the said papers, and the same thereafter were maintained, cataloged, segregated, sorted and identified by members of the staff of the National Archives in accordance with filing and cataloging procedures established by the National Archives and as to which the taxpayer had no element of control. The materials constituting the gift thereafter were, after a period of time extending from April 6, 1969 through March 27, 1970, individually itemized and appraised by the appraiser, and as a result of said appraisal, the market value ascribed to the gift was certified to by an affidavit executed by said appraiser on April 6, 1970.

C DEED

While, in our opinion, the law is clear that an instrument of deed is not a necessary requisite to a gift of personal property, the duly appointed and constituted attorney-in-fact and agent of the taxpayer did on April 21, 1969 execute an instrument of gift reciting and declaring the intent of the donor to make such gift; that said gift had in fact been made on March 27, 1969 and the subject matter thereof delivered to the National Archives. The instrument contained a clause reserving to the donor only a right of access to himself to inspect and copy the materials. In our opinion, the law is clear

A-12

LAW OFFICES

KALMBACH, DE MARCO, KNAPP & CHILLINGWORTH

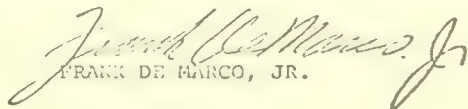
Coopers and Lybrand
August 22, 1973
Page Three

that the reservation of such right of access for inspection and copying by the donor did not constitute a sufficient retention of ownership in the material to anyway vitiate the gift.

Very truly yours,

KALMBACH, DE MARCO, KNAPP & CHILLINGWORTH

By


FRANK DE MARCO, JR.

FDM:gem

A-159

Exhibit I - 9



ASSISTANT SECRETARY

THE DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

August 14, 1973

MEMORANDUM FOR: MR. DOUGLAS PARKER

FROM: EDWARD L. MORGAN

SUBJECT: President's Papers

Attached is a memorandum setting forth my
basic recollection of the facts regarding the
President's papers.

Attachment

A-160

1968

In late November, after the election, I began working for John Ehrlichman. Beginning in December, I coordinated some of the President's personal affairs, among other things.

Regarding Mr. Nixon's papers in particular, I recall that Miss Lowie Gaunt came to New York to assist in their identification.

Most of the papers were located in the warehouse of Mudge, Rose, Guthrie & Alexander. Mr. Richard Ritzel and Mr. Pat Tannian were the two lawyers at that firm who were handling the President's affairs. There could have been others of whom I was not generally aware; particularly, senior partners who could have been discussing matters directly with Mr. Nixon. I did not deal directly with the President.

I recall that the papers were transferred to a large unoccupied office at the firm where Mr. Ralph Newman worked on them. I do not know who retained Mr. Newman. I remember meeting him one evening with Mr. Ritzel and Mr. Tannian.

I do remember that the work was done between Christmas and New Year's. In fact, I may have been the one who assisted simply because I was one of the few who did not go home or leave New York for Christmas.

Basically, I was reporting to Mr. Ehrlichman that all was "on track" per Messrs. Ritzel and Tannian.

I am certain that I never saw the President's tax return, although I am certain that I did see the deed of gift that was prepared by the law firm.

I do not recall who made the arrangements for delivery of the deed or for the actual transfer of the materials to GSA.

A-161

- 2 -

1969

Early in the year, the President decided to have all of his personal affairs handled by the firm of Kalmbach and DeMarco in California. I believe that all of the accounting functions formerly handled by the Vinney Andrews accounting firm in New York were also transferred to Kalmbach and DeMarco.

In February and early March, I was in Europe handling the arrangements for the President's trip.

I coordinated the transfer of the balance of the President's papers to GSA and the Archives which occurred on March 27, 1969, although I did not supervise the actual transaction.

In April, I made a trip to California regarding several matters. Apparently, Mr. DeMarco indicates that I called him and said the President wanted to make a gift of about \$500,000. I have no reason to doubt this, although I do not have a specific recollection of that call. I do remember that there was considerable work being done regarding the President's estate, his property, etc. in contemplation of the San Clemente purchase, so it seems logical to me that we were working on his tax situation at that time and decided to make the next gift.

Nonetheless, on that trip to California, which I believe was April 18 to 22, I was engaged in several things. I believe that on the 19th I spent part of the day at Whittier College regarding the Nixon Library and also attended a meeting in the College president's office to discuss the formation of a "Nixon Chair."

On Saturday evening, the 19th, I attended a Nixon Foundation meeting at the home of Mr. Taft Schreiber.

A-162

- 3 -

On Monday, April 21, I met Mr. Kalmbach and Mr. DeMarco at the Century Plaza, where I was staying, and drove to the Newport Beach area. I recall that we drove to San Clemente and looked at the property which is now the President's residence there. I recall spending some time at Mr. Kalmbach's law office discussing and working on all of the matters on which I was in California. This may have even included the question of the historical site status for Yorba Linda.

There is absolutely no question in my mind that I signed the deed of gift for the President at that time. The thing that I do not remember is whether or not there was any particular schedule attached to the deed at that time, and if so, its contents.

Since I had not personally supervised the transfer or the inventory of the materials subject to the gift, the schedule would have really meant very little to me anyway.

1970

I have no specific recollection of an inquiry from GSA about the whereabouts of the deed. I do think I remember calling Frank DeMarco about it, but I'm not sure. I assume that he mailed it to me and I gave it to GSA, or he mailed it to GSA directly. Nonetheless, I have no reason to dispute anyone else's recollection of the matter.

I would add only that I have had, and continue to have the highest personal and professional regard for Mr. Ritzel, Mr. Tannian, Mr. Kalmbach and Mr. DeMarco.

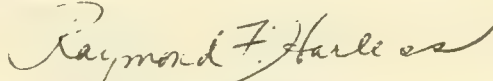
A-687

Exhibit XI - 1

December 13, 1973

CERTIFICATION

I hereby certify that the attached is a true
copy of the original joint federal income tax
return of Richard M. and Patricia R. Nixon which
was filed with the Internal Revenue Service for
the period ending December 31, 1969 .



Raymond F. Harless
Deputy Commissioner
of Internal Revenue

67.1 RICHARD M. AND PATRICIA R. NIXON 1969 FEDERAL INCOME TAX RETURN, JOINT COMMITTEE REPORT, A-687-714

A-688

1040 Combined with Form 1040A US Department of the Treasury / Internal Revenue Service Individual Income Tax Return 1969

For the year 1969 January 1-December 31, 1969 or other taxable year beginning 1969 ending 19

First name and initial (if joint return, use first names and middle initials of both) Richard M. and Patricia R. Last name (Nixon) Four social security number 567 43 0515

Present home address, number and street or rural route The White House City, town or post office, State and ZIP code Washington D. C. 20500

Enter below name and address used on your return for 1968 (if same as above write "Same"); if none filed, give region, if changing from taxable liquidator or joint filer, separate return for 1968 county and address: 610 VINCENT AVENUE, NEW YORK NY 10011

Name and address of employer at time of filing U.S. GOVERNMENT, WASHINGTON D.C.

Your Filing Status (Check only one) 1 ☐ Single 2 ☒ Married filing joint return (even if only one had income) 3 ☐ Married filing separate return and spouse is also filing a return. If this item checked give spouse's social security number in space provided above and enter first name here: 4 ☐ Unmarried Head of Household 5 ☐ Surviving widow(er) with dependent child 6 ☐ Married filing separate return and spouse is not filing a return

Check boxes for exemptions which apply 7a Yourself 7b Spouse (applies only if line 2 or line 6 is checked) Regular 65 or over Blind Enter number of boxes checked 2

8 First names of your dependent children who lived with you PATRICIA Enter number 1

9 OTHER DEPENDENTS (a) Subject - Enter figure 1 or the last column in right for each name listed (if more space is needed, use other order) (b) Relationship (c) Months lived in your home (See instructions, B-2) (d) 1543 or more income? (e) Support you furnished (100% with ALL) (f) Support furnished by dependent and others

10 Total exemptions from lines 7, 8, and 9 above 21

11 Wages, salaries, tips, etc. (Attach Form W-2 to back. If unavailable, explain on back) 11 736468 86

12a Dividends (Total balance inclusions) \$ 12b Less Exclusions \$ Balance 12c

13 Interest (Enter total here and if over \$100, also list in Schedule B, Part II) 13 3913 79

14 Other income Total from attached schedules (check schedules used—C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, Z) 14 87778 87

15a Total (Add lines 11, 12c, 13, and 14) \$ 15b Less Adjustments (See 1040-1) \$ Adjusted Gross Income 15c 728161 42

16 Tax from Tax Table (see tables on T-2 and T-3) 16

17 Tax surcharge on line 16 (see T-1 for tax surcharge tables) 17

18 Enter total of lines 16 and 17 OR amount from Schedule T, line 18, if applicable (check if from Tax Table A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, Z) 18 72682 09

19 Total Federal income tax withheld (attach Forms W-2 to back) 19 74923 26

20 Excess FICA tax withheld (two or more employers—see R-2) 20

21 Nonhighway Federal gasoline tax, Form 4136; Reg. Inv. Form 2429 21

22 1969 Estimated tax payments (include 1968 overpayment allowed as a credit) 22 33000 00

23 Total (add lines 19, 20, 21, and 22) 23 107983 26

24 If line 18 is larger than line 23, enter BALANCE DUE. Pay in full with return 24

25 If line 23 is larger than line 18, enter OVERPAYMENT 25 34301 17

26 Line 25 to be: (a) Credited on 1970 estimated tax 26 (b) Refunded \$ 34301 17

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief it is true and correct. I am not aware of any other tax liability of mine or of my spouse.

Signature of taxpayer (if filing jointly BOTH must sign even if only one had income) Richard M. Nixon Patricia R. Nixon Date 4-10-70 4-10-70

Prepared by: Kalmbach, DeMarco, Knapp & Chillingworth 611 West Sixth Street Los Angeles, California 90017

67.1 RICHARD M. AND PATRICIA R. NIXON 1969 FEDERAL INCOME TAX RETURN, JOINT COMMITTEE REPORT, A-687-714

A-689

WAGE AND TAX STATEMENT

COPY B To be filed with employee's FEDERAL tax return **1969**

INCOME TAX INFORMATION			SOCIAL SECURITY INFORMATION		STATE OR MUNICIPAL INFORMATION	
Federal income tax withheld	Wages paid subject to withholding at 1969	Other compensation paid at 1969	F.I.C.A. employee tax withheld	Total F.I.C.A. wages paid at 1969	State Tax withheld	City Tax withheld
Type or print EMPLOYER'S name and address below			Name of State		City	
10.50			Name of City or City			
Type or print EMPLOYER'S name and address below			Name of State		City	

*See Civil Service Regulations. **Gross wages for State of different from Federal. †Includes tips reported by employee. ‡Amount in before payroll deduction or such pay exclusion. §Add this item to wages as reported on Form 941. ¶Includes tips reported by employee. **Gross wages for State of different from Federal. †Includes tips reported by employee. ‡Amount in before payroll deduction or such pay exclusion. §Add this item to wages as reported on Form 941. ¶Includes tips reported by employee.

U.S. Treasury Department Internal Revenue Service 1041-100

33-600449
U.S. Executive Office
Treasury Department, Bureau of Accounts
Treasury Annex 400 Constitution Avenue, N.W.
Washington, D. C. 20540

WAGE AND TAX STATEMENT—1969
(For use in States or Cities collecting combined form)
Copy B—To be filed with employee's FEDERAL tax return

Type or print EMPLOYER'S Federal identification number, name, and address above

FEDERAL INCOME TAX INFORMATION			SOCIAL SECURITY INFORMATION		STATUS	
Federal income tax withheld	Wages paid subject to withholding at 1969	Other compensation paid at 1969	F.I.C.A. employee tax withheld	Total F.I.C.A. wages paid at 1969	1. Single	2. Married
\$74,983.26	\$236,498.36		None	None		2
EMPLOYER'S social security number			Name of State		State income tax withheld	
567-68-0513			Name of City		City income tax withheld	
Richard Nixon The White House Washington, D. C. 20500						
Type or print EMPLOYER'S name and address (including ZIP code) above			Uncollected Employee Tax on Tips		\$	

FORM W-2 U.S. Treasury Department, Internal Revenue Service 1041-100

67.1 RICHARD M. AND PATRICIA R. NIXON 1969 FEDERAL INCOME TAX
RETURN, JOINT COMMITTEE REPORT, A-687-714

A-690

SCHEDULE A (Form 1040)		Itemized Deductions		1969 05	
Name as shown on Form 1040 Richard M. and Patricia R. Nixon		Social Security Number 567 68 0513			
Medical and dental expenses (not compensated by insurance or otherwise) for medicine and drugs, doctors, dentists, nurses, hospital care, insurance premiums for medical care, etc.		Contributions—Cash—including checks, money orders, etc. (itemize)			
1 One-half of insurance premiums for medical care (but not more than \$150)					
2 Medicine and drugs					
3 Enter 1% of line 15c, Form 1040					
4 Subtract line 3 from line 2. Enter difference (if less than zero, enter zero)					
5 Itemize other medical and dental expenses (include balance of insurance premiums for medical care not deducted on line 1)					
SCHEDULE		11 Total cash contributions			
SCHEDULE		12 Other than cash (see instructions on A-1 for required statement). Enter total for such items here			
SCHEDULE		13 Carryover from prior years (see instructions on A-2)			
SCHEDULE		14 Total contributions (add lines 11, 12 and 13—see instructions on A-2 for limitation)		98448 45	
SCHEDULE		Interest expense—Home mortgage			
SCHEDULE		Installment purchases			
SCHEDULE		Other (itemize)			
SCHEDULE		15 Total interest expense		2594 32	
6 Total (add lines 4 and 5)		Miscellaneous deductions for child care, alimony, union dues, casualty losses, etc. (see instructions on A-2)			
7 Enter 3% of line 15c, Form 1040		SCHEDULE			
8 Subtract line 7 from line 6. Enter difference (if less than zero, enter zero)		15 Total miscellaneous deductions		3188 97	
9 Total deductible medical and dental expenses (add lines 1 and 8)	150.00	17 TOTAL ITEMIZED DEDUCTIONS (add lines 9, 10, 14, 15 and 16—enter here and on Schedule T, line 2)		17863 10	
Taxes—Real estate					
State and local gasoline					
General sales (see sales tax tables)					
State and local income					
Personal property					
10 Total taxes	22453 36				

67.1 RICHARD M. AND PATRICIA R. NIXON 1969 FEDERAL INCOME TAX RETURN, JOINT COMMITTEE REPORT, A-687-714

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SCHEDULE D
(Form 1040)
Department of the Treasury
Internal Revenue Service

Sales or Exchanges of Property

▶ See instructions on D-1 and D-2.
▶ If you use this schedule, attach it to Form 1040.

1969 09

Name as shown on Form 1040

Richard M. and Patricia R. Nixon

Social Security Number

567 68 0515

Part I—CAPITAL ASSETS—Short-term capital gains and losses—assets held not more than 6 months

a. Kind of property, including date acquired, real estate, or other (Specify)	b. Description (Exemptions 100% of 2% gain, 2-year hold, etc.)	c. How and when acquired (Enter letter symbol (see instructions))	d. Date acquired (mo., day, yr.)	e. Date sold (mo., day, yr.)	f. Gross sales price	g. Depreciation allowed (or allowable) (see instructions)	h. Cost or other basis, cost of subsequent improvements (if not purchased, attach or attach and success of sale)	i. Gain or loss (If plus or loss 1)
1								

2 Enter your share of net short-term gain (or loss) from partnerships and S corporations

3 Enter unused short-term capital loss carryover from preceding taxable years (attach statement)

4 Net short-term gain (or loss) from lines 1, 2, and 3

Long-term capital gains and losses—assets held more than 6 months (12 months or more for certain livestock)

5 Enter gain from Part II, line 3

SECURITY 184891.54	FISHER ISLAND A INC	1967	4-69	371787.00	186891.00	184891.00 ✓
---------------------------	----------------------------	-------------	-------------	------------------	------------------	--------------------

STATE OF RESIDENCE - NON-RECOGNITION OF GAIN - FORM 709 ATTACHED

Total long-term gross sales price

6a Enter your share of net long-term gain (or loss) from partnerships and S corporations

6b Enter your share of net long-term gain from small business corporations (Subchapter S)

7 Enter unused long-term capital loss carryover from preceding taxable years (attach statement)

8 Capital gain dividends

9 Net long-term gain (or loss) from lines 5, 6a, 6b, 7, and 8

10 Combine the amounts shown on lines 4 and 9, and enter the net gain (or loss) here

11 IF LINE 10 SHOWS A GAIN—Enter 50% of line 9 or 50% of line 10, whichever is smaller. (Enter zero if there is a loss or no entry on line 9.) (See reverse side for computation of alternative tax.)

12 Subtract line 11 from line 10—Enter here and in Part IV, line 1, on reverse side

13 IF LINE 10 SHOWS A LOSS—Enter here and in Part IV, line 1, the smallest of: (a) line 10; (b) line 3, Sch. T, (line 15c, Form 1040, if tax table used) computed without capital gains or losses; or (c) \$1,000.

Part II—GAIN FROM DISPOSITION OF DEPRECIABLE PROPERTY UNDER SECTIONS 1245 AND 1250—assets held more than 6 months (see instructions on D-1 for definitions)

Where double headings appear, use the first heading for section 1245 and the second heading for section 1250.

a. Kind of property and how acquired (if necessary, attach statement of descriptive facts and dates before 1962 or 1950 to indicate type of asset)	b. Date acquired (mo., day, yr.)	c. Date sold (mo., day, yr.)	d. Gross sales price	e. Cost or other basis, cost of depreciation (or proportion of cost paid for asset, attach statement and success of sale)
1				

1 Depreciation allowed (or allowable) over subsequent

6-1 Prior to January 1, 1962 6-2 After December 31, 1961
Prior to January 1, 1964 After December 31, 1963

f. Adjusted basis (a less basis of f and g)	h. Total gain (d less e)	i. Ordinary gain (Excess of f over h)	j. Other gain (b less i)

2 Total ordinary gain. Enter here and in Part IV, line 2, on reverse side

3 Total other gain. Enter here and in Part IV, line 5; however, if the gains do not exceed the losses when this amount is combined with other gains and losses from section 1231 property enter the total of column j in Part III, line 1.

(341)

1969 10

Name as shown on Form 1040
Richard M.

Social Security Number
567 : 68 0513

PART I—Pension and Annuity Income. • If pension or annuity is fully taxable for 1969, complete only lines 1 and 5 • If not fully taxable, complete all lines including line 2 if applicable.

- ## PART II.—Rent and Royalty Income

2 Net income (or loss) from rents and royalties (column 2 plus column 3 less columns 4 and 5)

Income (or loss) Total of column (d)	
---	--

TOTAL OF PARTS I, II AND III (Enter here and include in total on line 14, Form 1040) . . . /

Schedule for Depreciation Claimed in Part II Above

Taxpayers using Revenue Procedures 62-21 and 65-13: Make no entry in column 2, enter the cost or other basis of assets held at end of year in column 3, and enter the accumulated depreciation at end of year in column 4. If you need more space, use Form 4562.

SUMMARY OF DEPRECIATION

	Straight Line	Declining balance	Sum of the years digits	Units of production	Additional first year depreciation (13)	Other (explain)	Total
1 Motor Pay Poles 62-21 and 65-13							
2 Other	818.60						818.60

A-694

(343)

67.1 RICHARD M. AND PATRICIA R. NIXON 1969 FEDERAL INCOME TAX RETURN, JOINT COMMITTEE REPORT, A-687-714

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SCHEDULE T (Form 1040)

Department of the Treasury
Internal Revenue Service

Tax Computation

1969

- If no entry is made on line 14, line 16, or line 17, keep this for your records
- If entry is made on line 14, line 16, or line 17, attach to Form 1040

Name as shown on Form 1040

Richard M. and Patricia R. Nixon

Social Security Number
557 63 0513

1 Your adjusted gross income (from line 15c, Form 1040)	32216 12
Note.—If your adjusted gross income is less than \$5,000 and you choose to take the standard deduction instead of itemizing your deductions, omit lines 2, 3, 4, and 5. Find your tax in the appropriate table (A or B on T-2 or C on T-3). Enter tax on line 6 below.	
2 Enter on the line at the right the amount of your deduction figured under one of the following methods:	
a If you itemize deductions, enter the total from Schedule A, line 17	
OR	
b Figure your standard deduction as follows:	
(1) Enter 10 percent of line 1 but do not enter more than \$1,000 (\$500 if married and filing separately)	\$ 1783 10
(2) Enter the sum of: \$200 (\$100 if married and filing separately) plus \$100 for each exemption claimed on line 10 of Form 1040, but do not enter more than \$1,000 (\$500 if married and filing separately)	\$ 1496 76 42
3 Subtract the amount on line 2 from the amount on line 1 and enter the balance here	1800 00
4 Enter number of exemptions claimed on line 10, Form 1040, 3. Multiply this number by \$600, and enter the amount here	1783 10
5 Subtract the amount on line 4 from the amount on line 3 and enter the balance here. This is your taxable income. Figure tax on this amount by using the appropriate Tax Rate Schedule (I, II, or III) on T-1. Enter tax on line 6 below	6607 46
6 Tax	6607 46
7 If you claim the retirement income credit, enter amount from Schedule R, line 12, here	7268 09
8 Subtract line 7 from line 6	6607 46
9 Tax surcharge. If line 8 is less than \$735, find surcharge from tax surcharge tables on T-1. If line 8 is \$735 or more, multiply amount on line 8 by .10 and enter result here	6607 46
10 Total (Add lines 6 and 9)	7268 09
11 Retirement income credit from Schedule R, line 17 (attach Schedule R)	
12 Investment credit (attach Form 3469)	
13 Foreign tax credit (attach Form 1116)	
14 Total credits (add lines 11, 12, and 13)	
15 Income tax (subtract line 14 from line 10)	7268 09
16 Self-employment tax (attach Schedule SE)	
17 Tax from recomputing prior-year investment credit (attach Form 4255)	
18 Total tax (add lines 15, 16, and 17). Enter here and on line 18, Form 1040 (make no entry on line 16 or 17, Form 1040). Attach Sch. T to Form 1040 only if you made an entry on line 14, 16, or 17 above	7268 09

Income Averaging.—If your income has increased substantially this year, it may be to your advantage to figure your tax before surcharge under the "averaging method." Obtain Schedule G from an Internal Revenue Service office for full details.

Alternative Tax.—It will usually be to your advantage to use the alternative tax if your net long term capital gain exceeds your net short term capital loss, or if you have a net long term capital gain only, and you are filing (a) a separate return with taxable income exceeding \$25,000, or

(b) a joint return, or as a surviving husband or wife, with taxable income exceeding \$52,000, or (c) as a head of household with taxable income exceeding \$33,000.

Line 9—Tax Surcharge.—The rate for the calendar year 1969 is 10 percent. The tax surcharge is an addition to the regular income tax. See the Tax Surcharge Tables on T-1.

Credit for Foreign Taxes and Tax-Free Covenant Bonds.—You may claim these credits only if you itemize deductions.

To claim tax-free covenant bonds credit, enter the amount of credit above line 14, and write "covenant bonds" to left of the entry.

Line 16—Self-Employment Tax.—Enter amount shown on line 9, Part III, Schedule SE.

Line 17—Tax From Recomputing Prior Year Investment Credit.—Enter the amount by which the credit taken in a prior year or years exceeds the credit as recomputed due to early disposition of property. Attach Form 4255.

67.1 RICHARD M. AND PATRICIA R. NIXON 1969 FEDERAL INCOME TAX
RETURN, JOINT COMMITTEE REPORT, A-687-714

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EMPLOYER SCHEDULE

NAME Richard M. and Patricia R. Nixon 567 68 0515

ADDRESS _____

YEAR ENDED 1969

NAME AND ADDRESS	C O D E	TOTAL WAGES		F.I.C.A.	FEDERAL TAX WITHHELD		STATE TAX WITHHELD	
1. U.S. EXECUTIVE OFFICE WASHINGTON DC	H	23648	36		74983	76		
2. G. POLKATTER BEVERLY HILLS, CALIF	H	10	50		-0-			V
3.								
4.								
5.								
6.								
7.								
8.								
9.								
10.								
11.								
12.								
13.								
14.								
15.								
TOTALS								
ADD: EXCESS F.I.C.A. WITHHELD		XXXXX		XXXX			XXXX	
TOTAL WAGES AND TAXES		23646	86	XXXX	74983	76		
CODE: H (HUSBAND) W (WIFE)								

FORM NO. 15

67.1 RICHARD M. AND PATRICIA R. NIXON 1969 FEDERAL INCOME TAX
RETURN, JOINT COMMITTEE REPORT, A-687-714

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FORM 7—REVENUE, TAX ADMIN.—P. O. BOX 2266—NEW ORLEANS, LA.

Name and address Richard M. and Patricia R. Nixon 567 68 0515

Year 1969

Exhibit B

ITEMIZED DEDUCTIONS

CONTRIBUTIONS:

EAST WHITTIER FRIENDS CHURCH 250 00
WHITTIER COLLEGE 500 00
PATIENT'S ASSIST. LEAGUE 100 00
ORTHOSOMNIAN SOCIETY 100 00
RED CROSS TELETHON 1000 00
UNITED RIVER FUND 1000 00
NATIONAL SYMPHONY 100 00
DUKE UNIVERSITY 100 00

NON-CASH CONTRIBUTIONS

EXHIBITS ATTACHED 9598 45

TOTAL ALLOWABLE

\$ 9848 45

INTEREST:

SCHEDULE 2594 35

TAXES:

Property—city COUNTY 12500 36

—state

Personal property

Sales—state and/or city 650 00

Gasoline—state 73 00

State income 7351 50

SALES TAX—FURNITURE 1878 50

< 32570.007

\$ 22433 36

MEDICAL EXPENSES:

Drugs

Less 1% of adjusted gross income

Net drugs, if under 66

Other medical expenses:

1. MEDICAL INSURANCE 150 00

Total (not compensated by insurance or otherwise)

Less 3% of adjusted gross income, if under 66

Allowable medical expenses 150 00

CHILD CARE (OR CERTAIN OTHER DEPENDENTS) EXPENSES:

CASUALTY OR THEFT LOSSES:

MISCELLANEOUS:

EXHIBIT A—ATTACHED 31888 97

\$ 31888 97

SUMMARY

Total for federal

Add:

Deduct:

Total for state

\$ 17835 10

Group 1 = 2302

Year 1969

(347)

A-699

*Dr. M. Nixon
by [signature]*

RICHARD M. AND PATRICIA R. NIXON
CHARITABLE CONTRIBUTION CLAIMED
TAXABLE YEAR ENDING DECEMBER 31, 1969

1. Donee: General Services Administrator,
United States of America
2. Date of Gift: March 27, 1969
3. Description of Gift: Personal papers, manuscripts
and other materials.
4. Market Value: Market value at time of gift was
\$576,000. This valuation is based
upon the written appraisal of
Ralph Geoffrey Newman
Fine Arts Appraiser
18 East Chestnut Street
Chicago, Illinois
5. Restrictions: None. The gift was free and clear,
with no rights remaining in the
taxpayer.

67.1 RICHARD M. AND PATRICIA R. NIXON 1969 FEDERAL INCOME TAX
RETURN, JOINT COMMITTEE REPORT, A-687-714

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Richard M. and Patricia R. Nixon 567 68 0315

Year Ended 1969

APPRAISAL

Abraham Lincoln Book Shop, Inc., an Illinois corporation having its principal place of business in Chicago, Illinois, does hereby certify that, through its officers, agents and employees, it is familiar with and has carefully examined and appraised:

THE PAPERS OF RICHARD MILHOUS NIXON, PART II

This material is the property of Richard Milhous Nixon
The White House
Washington, D. C. 20500

and is listed in the schedule herewith following and attached to this statement and expressly made a part thereof. There has been recorded, together with the listing of each item, figures representing the fair and reasonable and true market value thereof, in money, as by it known, estimated and believed as of the twenty-seventh day of March 19 69

In witness whereof Abraham Lincoln Book Shop, Inc. has appended hereto the affidavit of its president Ralph G. Newman and has caused these presents to be signed in its behalf by its president and attested by its secretary, Margaret H. April and its corporate seal to be hereunto affixed this sixth day of April 19 70

ABRAHAM LINCOLN BOOK SHOP, INC.

an Illinois corporation

By 

president

Attested:

By Margaret H. April

secretary

A-701

APPRAISAL

STATE OF ILLINOIS }
COUNTY OF COOK } SS

Ralph G. Newman being first duly sworn, upon oath deposes and states as follows:

1. He is the president and the duly authorized agent in this behalf of Abraham Lincoln Book Shop, Inc., and he makes this affidavit in its behalf and under its lawful authority. He has full personal knowledge of all of the matters and things hereinafter set forth.

2. Said Abraham Lincoln Book Shop, Inc., was duly authorized and created and exists under and by virtue of the laws of the State of Illinois and it is duly authorized to and does transact business in the State of Illinois and throughout the United States.

3. Among the purposes and businesses of said Abraham Lincoln Book Shop, Inc., is the buying, selling and dealing in and general appraisal of libraries, collections of rare books, autographs, letters, documents, drawings, prints, paintings, etchings, broadsides, historical objects, mementos and curiosities and other allied printed, pictorial and manuscript materials.

4. Said Abraham Lincoln Book Shop, Inc., its officers, employees and agents, and its predecessor companies have been doing business as appraisers of libraries, collections of rare books, autographs, letters, documents, drawings, printing, paintings, etchings, broadsides, historical objects, mementos and curiosities and other allied printed, pictorial and manuscript materials since the year 1933, in Illinois and in various other states of the United States of America and have been called upon as consultants in such matters by many of the leading private collectors, libraries, museums and public and private institutions of this country.

5. The said Abraham Lincoln Book Shop, Inc., through its employees, agents and officers did, from the sixth to the eightth day of April 19 69, and on Nov. 3, Nov. 17 through 20, and December 9 19 69, examine the PAPERS OF RICHARD MILHOUS NIXON, PART II

being the property of Richard Milhous Nixon
The White House
Washington, D. C. 20500

and found that the reasonable and fair and true market value thereof in money was Five Hundred Seventy-Six Thousand and no/hundredths - - - - - Dollars (\$576,000.00) as appears from the annexed schedule attached hereto and made a part thereof.

This deponent verily believes the said valuation to be the fair and reasonable and true market value.

Ralph G. Newman

Subscribed and sworn to before me, a Notary Public, this

sixth day of April 19 70

Notary Public of Cook County, Illinois.

My commission expires September 30, 1971

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PROPERTY OF RICHARD MILHOUS NIXON
The White House
Washington, D. C. 20500

APPRAISAL

THE PAPERS OF RICHARD MILHOUS NIXON

PART II

*What
appears*

Part II of The Papers of Richard Milhous Nixon was delivered to the Office of Presidential Papers of The National Archives and Records Service, Washington, D. C., March 24 to 27, 1969.

These papers were transferred from their original containers to standard archives boxes by the members of the staff of the Office of Presidential Papers. In identifying the papers our reference to boxes is to these standard archives boxes.

The papers and documents covered by this document are divided into five (5) general divisions, and are so identified.

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PROPERTY OF RICHARD MILHOUS NIXON
The White House
Washington, D. C. 20500

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THE PAPERS OF RICHARD MILHOUS NIXON

PART II

I. GENERAL CORRESPONDENCE

AS VICE PRESIDENT, 1953-1961

Aandahl through Zwieng

[National Archives Boxes #18

through #845]

828 boxes ----- 414,000 items

II. APPEARANCE FILE

1948-1962

[National Archives Boxes

#1 through #173]

173 boxes ----- 87,000 items

III. CORRESPONDENCE

RE: INVITATIONS AND TURN-DOWNS

1954-1961

[In unnumbered National Archives Boxes]

56 boxes ----- 27,000 items

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PROPERTY OF RICHARD MILHOUS NIXON
The White House
Washington, D. C. 20500

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IV. FOREIGN TRIP FILES

AS VICE PRESIDENT, 1953-1961

[In unnumbered National Archives
Boxes]

116 boxes ----- 57,000 items

V. VISIT OF NIKITA S. KHRUSHCHEV

TO THE UNITED STATES, 1959

[In unnumbered National Archives
Boxes]

3 boxes ----- 15,000 items

Total number of boxes; Part II,
The Richard Milhous Nixon Papers ---- 1,176

Total number of items; Part II,
The Richard Milhous Nixon Papers -- 600,000

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PROPERTY OF RICHARD MILHOUS NIXON
The White House
Washington, D. C. 20500

The appraised fair market value of The Richard Milhous Nixon Papers, Part II, as of the twenty seventh day of March, One Thousand Nine Hundred Sixty Nine, is Five Hundred Seventy Six Thousand and no/hundredths Dollars (\$576.000).

67.1 RICHARD M. AND PATRICIA R. NIXON 1969 FEDERAL INCOME TAX
RETURN, JOINT COMMITTEE REPORT, A-687-714

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SCHEDULE OF
EXHIBIT A

CPA TP 2102

Name Richard M. and Patricia R. Nixon

Social Security or
Identification No. 567 68 0315

Address _____

Form _____ Schedule _____ Line _____

Year 1969

EXHIBIT B - Miscellaneous

✓(1) PROFESSIONAL - ABRAHAM LINCOLN BOOK SHOP - APPRAISAL OF PRESIDENTIAL PAPERS DONATED TO THE NATIONAL ARCHIVES OF THE UNITED STATES	276265
✓(2) EXPENSES INCURRED IN THE PERFORMANCE OF OFFICIAL FUNCTIONS AS PRESIDENT OF THE UNITED STATES OF AMERICA	1660387
✓(3) SAME AS (2)	73678
✓(4) EXHIBIT A-1, TAN CLEMENTE EXPENSES	469962
✓(5) EXHIBIT A-1, 500 BAY LANE EXPENSES	658605
TOTAL - TO EXHIBIT B - MISCELLANEOUS	3188897

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Name and address Richard M. and Patricia R. Nixon 567 68 0515
Schedule 4 A

DEPRECIATION

No.	Description of Property	Date acquired	Cost or other basis	Previous depreciation	Method used	Estimated life or year (yr.)	Remaining life (yr.)	YEAR 1969	
								Depreciation allowed for this year	Depreciation taken for this year
1	FLORIDA RESIDENCE	1-1-64	54361.58	-0-	150% DB	30 YEARS		2718.27	
2	500 BAY LANE								
3									
4	IMPROVEMENTS	6-69	34254.01	-0-	150% DB	30 YEARS		1013.04	
5									
6			89099.56					3731.51	
7									
8	* CONVERTED TO 100% PARTNERSHIP USE								
9									
10									
11	FLORIDA RESIDENCE	7-15-69	75696.61	-0-	150% DB	15 YEARS		4081.62	
12	PROPERTY								
13	PROPERTY								
14	PROPERTY								
15	FURNITURE	7-15-69	13149.63	-0-	150% DB	8 YEARS		1150.03	
16									
17									
18									
19			88846.74					3711.67	
20									
21									
22									
23									
24									
25									
26									
27									
28									
Totals									

67.1 RICHARD M. AND PATRICIA R. NIXON 1969 FEDERAL INCOME TAX
RETURN, JOINT COMMITTEE REPORT, A-687-714

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Richard M. and Patricia R. Nixon 567 68 0515
Taxpayer Year

1969

OTHER INCOME

PAGE 1, LINE 14

Schedule C - Profit (or Loss) from
Business or Profession

\$ _____

Schedule D - Sales or Exchanges of
Property

92448.50

Schedule E - Supplemental and
Miscellaneous Income

< 4666.63 >

Schedule F - Farm Income and
Expenses

Other: _____

Other: _____

TOTAL

\$ 87778.87

67.1 RICHARD M. AND PATRICIA R. NIXON 1969 FEDERAL INCOME TAX
RETURN, JOINT COMMITTEE REPORT, A-687-714

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FORM 2119 <small>(Rev. 7-18-75)</small> U.S. DEPARTMENT OF THE TREASURY Internal Revenue Service	STATEMENT CONCERNING SALE OR EXCHANGE OF PERSONAL RESIDENCE <small>(Attach this schedule to your income tax return Form 1040)</small>	Taxable year <div style="text-align: right; font-size: 1.2em;">1969</div>
Name and address of taxpayer Richard M. and Patricia R. Nixon The White House, Washington, D. C. 20500		
1. Date former residence sold <div style="text-align: right;">JULY 31, 1969</div>	2. If you were married, do you and your wife (husband) have the same proportionate ownership interest in your new residence as you had in your old residence? (If "No," see the Consent on other side.) <div style="text-align: right;">X</div>	
2a. Date new residence bought <div style="text-align: right;">JULY 15, 1969</div>	3a. Were you 65 or older on date of sale? (If you answered "Yes," see Note below.) <div style="text-align: right;">X</div>	
b. If new residence was constructed for you, date construction began 	b. If you answered "Yes" to 3a, did you use the property sold as your principal residence for a total of at least 5 years (except for short temporary absences) during the 8-year period preceding the sale? <div style="text-align: right;">X</div>	
c. Date you occupied new residence <div style="text-align: right;">JULY 15, 1969</div>	c. If you answered "Yes" to 3b, do you wish to elect to exclude gain on the sale from your gross income? <div style="text-align: right;">X</div>	
d. Were both the old and new properties used as your principal residence? <div style="text-align: right;">X</div>	e. Were any rooms in either residence rented or used for business purposes at any time? (If "Yes," explain on separate sheet and attach.) <div style="text-align: right;">X</div>	

COMPUTATION OF GAIN AND ADJUSTED SALE PRICE

4. Selling price of residence (Do not include selling price of personal property items).....	312,500.00
5. Less: Commissions and other expenses of sale (From Schedule I on other side).....	272.45
6. Amount realized.....	309,777.55
7. Less: Basis of residence sold (From Schedule II on other side).....	166,860.32
8. Gain on sale (Line 6 less line 7). If line 7 is more than line 6, there is no gain, and no further entries should be made on this form	142,917.23
9. Fixing-up expenses (From Schedule III on other side).....	309,777.55
10. Adjusted sales price (Line 6 less line 9).....	309,777.55

If you answered "No" to question 3a or 3c, complete only lines 11 through 14.
If you answered "Yes" to question 3a, complete lines 15 through 17, or 15 through 20, whichever is applicable.

COMPUTATION OF GAIN TO BE REPORTED AND ADJUSTED BASIS OF NEW RESIDENCE—GENERAL RULE

11. Cost of new residence.....	144,922.05
12. Gain taxable this year (line 10 less line 11, but not more than line 8). If line 11 is more than line 10, enter zero. Enter here and in column 1, line 1, or line 5, Part I of Schedule D (Form 1040), whichever is applicable.....	- 0 -
13. Gain on which tax is to be deferred (line 8 less line 12).....	142,917.23
14. Adjusted basis of new residence (line 11 less line 13).....	13,6309.82

COMPUTATION OF EXCLUSION, GAIN TO BE REPORTED AND ADJUSTED BASIS OF NEW RESIDENCE—SPECIAL RULE
(For use of taxpayers 65 years of age or over who elected "Yes" to 3c above.)

15. If line 10 above is \$20,000 or less, the entire gain shown on line 8 is excludable from gross income. If line 10 is over \$20,000, determine the portion of this gain excludable as follows:	
a. Divide amount on line 10 into \$20,000.....	
b. Portion of gain excludable (multiply amount on line 8 by figure on line 15a) enter result here.....	
16. Portion of gain not excludable (line 8 less line 15b).....	
17. Cost of new residence. If a new personal residence was not purchased, enter "None," and do not complete the following lines. The amount shown on line 16 should then be entered in column 1, line 5, Part I of Schedule D (Form 1040).....	
18. Gain taxable this year (line 16 less lines 15b and 17, but not more than line 16). If line 17 plus line 15b is more than line 10, enter zero. Enter here and in column 1, line 5, Part I of Schedule D (Form 1040).....	
19. Gain on which tax is to be deferred (line 16 less line 18).....	
20. Adjusted basis of new residence (line 17 less line 19).....	

NOTE: Special provision available if you were 65 or older on the date of the sale or exchange of your principal residence. If you met the age requirement and owned and used the residence disposed of as your principal residence for a total of 5 years out of the 8 years preceding the

sale, you may elect to exclude part or all of the gain from such sale. If a joint return is filed only the husband or wife need meet the age requirement. You are only eligible for the exclusion once. This is true regardless of your marital status at the time the election is made.

Form 2119 (Rev. 7-69)

67.1 RICHARD M. AND PATRICIA R. NIXON 1969 FEDERAL INCOME TAX RETURN, JOINT COMMITTEE REPORT, A-687-714

A-712

CONSENT OF HUSBAND AND WIFE TO APPLY SEPARATE GAIN
ON SALE OF OLD RESIDENCE TO BASIS OF NEW RESIDENCE

NOTE: The following Consent must not be completed if there was no gain on the sale of the old residence. If, however, there was a gain and if the ownership interests of the husband and wife in the old and new residences were not in the same proportion, the separate gain on the sale of the old residence will be separately taxable to the husband or wife unless this Consent is filed.

	HUSBAND'S PORTION	WIFE'S PORTION
Adjusted sales price of old residence (From line 10)	\$	\$
Cost of new residence (From line 11 or 17)	\$	\$

The undersigned taxpayer, husband and wife, consent to have the basis of the joint or separate interest in the new residence reduced by the amount of the joint or separate gain on the sale of the old residence which is not taxable solely by reason of the filing of this Consent.

SIGNATURE OF HUSBAND	DATE
SIGNATURE OF WIFE	DATE

SCHEDULE I—COMMISSIONS AND OTHER EXPENSES OF SALE (Line 5)

This includes sales commissions, advertising expenses, attorney and legal fees, etc., incurred to effect the sale of the old residence. Enter the name and address of the payee and the date of payment for each item.

ITEM EXPLANATION	AMOUNT
LEGAL SERVICES	\$ 1642.15
TRUSTEE'S FEE	1000.00
TRUSTEE'S EXPENSES	85.30
	\$ 2727.45

SCHEDULE II—BASIS OF OLD RESIDENCE (Line 7)

This includes the original cost of the property to the taxpayer, commissions, and other expenses incurred in its purchase, the cost of improvements, etc., less the total of the depreciation allowed or allowable (if any), all casualty losses previously allowed (if any), and the non taxable gain (if any) on the sale or exchange of a previous personal residence.

ITEM EXPLANATION	AMOUNT
PURCHASE PRICE 5-14-63	\$ 100,000.00
IMPROVEMENTS	66860.32
	\$ 166860.32

SCHEDULE III—FIXING-UP EXPENSES (Line 8)

These are decorating and repair expenses which were incurred solely to assist in the sale of the old property, and which are not ordinarily deductible in computing taxable income nor taken into account in computing the basis of the old residence or the amount realized from its sale. Fixing-up expenses must have been incurred for work performed within 90 days before the contract to sell was signed, and must have been paid for not later than 30 days after the sale.

ITEM EXPLANATION	DATE WHEN PERFORMED	DATE PAID	AMOUNT
			\$

A-713

Name and address Richard M. and Patricia R. Nixon
567 68 0515
Schedule 3

RENTS AND ROYALTIES

Description of property	1969	1968	1967	1966	1965	1964	1963	1962	1961	1960	1959	1958	1957	1956	1955	1954	1953	1952	1951	1950	1949	1948	1947	1946	1945	1944	1943	1942	1941	1940	1939	1938	1937	1936	1935	1934	1933	1932	1931	1930	1929	1928	1927	1926	1925	1924	1923	1922	1921	1920	1919	1918	1917	1916	1915	1914	1913	1912	1911	1910	1909	1908	1907	1906	1905	1904	1903	1902	1901	1900	1899	1898	1897	1896	1895	1894	1893	1892	1891	1890	1889	1888	1887	1886	1885	1884	1883	1882	1881	1880	1879	1878	1877	1876	1875	1874	1873	1872	1871	1870	1869	1868	1867	1866	1865	1864	1863	1862	1861	1860	1859	1858	1857	1856	1855	1854	1853	1852	1851	1850	1849	1848	1847	1846	1845	1844	1843	1842	1841	1840	1839	1838	1837	1836	1835	1834	1833	1832	1831	1830	1829	1828	1827	1826	1825	1824	1823	1822	1821	1820	1819	1818	1817	1816	1815	1814	1813	1812	1811	1810	1809	1808	1807	1806	1805	1804	1803	1802	1801	1800	1799	1798	1797	1796	1795	1794	1793	1792	1791	1790	1789	1788	1787	1786	1785	1784	1783	1782	1781	1780	1779	1778	1777	1776	1775	1774	1773	1772	1771	1770	1769	1768	1767	1766	1765	1764	1763	1762	1761	1760	1759	1758	1757	1756	1755	1754	1753	1752	1751	1750	1749	1748	1747	1746	1745	1744	1743	1742	1741	1740	1739	1738	1737	1736	1735	1734	1733	1732	1731	1730	1729	1728	1727	1726	1725	1724	1723	1722	1721	1720	1719	1718	1717	1716	1715	1714	1713	1712	1711	1710	1709	1708	1707	1706	1705	1704	1703	1702	1701	1700	1699	1698	1697	1696	1695	1694	1693	1692	1691	1690	1689	1688	1687	1686	1685	1684	1683	1682	1681	1680	1679	1678	1677	1676	1675	1674	1673	1672	1671	1670	1669	1668	1667	1666	1665	1664	1663	1662	1661	1660	1659	1658	1657	1656	1655	1654	1653	1652	1651	1650	1649	1648	1647	1646	1645	1644	1643	1642	1641	1640	1639	1638	1637	1636	1635	1634	1633	1632	1631	1630	1629	1628	1627	1626	1625	1624	1623	1622	1621	1620	1619	1618	1617	1616	1615	1614	1613	1612	1611	1610	1609	1608	1607	1606	1605	1604	1603	1602	1601	1600	1599	1598	1597	1596	1595	1594	1593	1592	1591	1590	1589	1588	1587	1586	1585	1584	1583	1582	1581	1580	1579	1578	1577	1576	1575	1574	1573	1572	1571	1570	1569	1568	1567	1566	1565	1564	1563	1562	1561	1560	1559	1558	1557	1556	1555	1554	1553	1552	1551	1550	1549	1548	1547	1546	1545	1544	1543	1542	1541	1540	1539	1538	1537	1536	1535	1534	1533	1532	1531	1530	1529	1528	1527	1526	1525	1524	1523	1522	1521	1520	1519	1518	1517	1516	1515	1514	1513	1512	1511	1510	1509	1508	1507	1506	1505	1504	1503	1502	1501	1500	1499	1498	1497	1496	1495	1494	1493	1492	1491	1490	1489	1488	1487	1486	1485	1484	1483	1482	1481	1480	1479	1478	1477	1476	1475	1474	1473	1472	1471	1470	1469	1468	1467	1466	1465	1464	1463	1462	1461	1460	1459	1458	1457	1456	1455	1454	1453	1452	1451	1450	1449	1448	1447	1446	1445	1444	1443	1442	1441	1440	1439	1438	1437	1436	1435	1434	1433	1432	1431	1430	1429	1428	1427	1426	1425	1424	1423	1422	1421	1420	1419	1418	1417	1416	1415	1414	1413	1412	1411	1410	1409	1408	1407	1406	1405	1404	1403	1402	1401	1400	1399	1398	1397	1396	1395	1394	1393	1392	1391	1390	1389	1388	1387	1386	1385	1384	1383	1382	1381	1380	1379	1378	1377	1376	1375	1374	1373	1372	1371	1370	1369	1368	1367	1366	1365	1364	1363	1362	1361	1360	1359	1358	1357	1356	1355	1354	1353	1352	1351	1350	1349	1348	1347	1346	1345	1344	1343	1342	1341	1340	1339	1338	1337	1336	1335	1334	1333	1332	1331	1330	1329	1328	1327	1326	1325	1324	1323	1322	1321	1320	1319	1318	1317	1316	1315	1314	1313	1312	1311	1310	1309	1308	1307	1306	1305	1304	1303	1302	1301	1300	1299	1298	1297	1296	1295	1294	1293	1292	1291	1290	1289	1288	1287	1286	1285	1284	1283	1282	1281	1280	1279	1278	1277	1276	1275	1274	1273	1272	1271	1270	1269	1268	1267	1266	1265	1264	1263	1262	1261	1260	1259	1258	1257	1256	1255	1254	1253	1252	1251	1250	1249	1248	1247	1246	1245	1244	1243	1242	1241	1240	1239	1238	1237	1236	1235	1234	1233	1232	1231	1230	1229	1228	1227	1226	1225	1224	1223	1222	1221	1220	1219	1218	1217	1216	1215	1214	1213	1212	1211	1210	1209	1208	1207	1206	1205	1204	1203	1202	1201	1200	1199	1198	1197	1196	1195	1194	1193	1192	1191	1190	1189	1188	1187	1186	1185	1184	1183	1182	1181	1180	1179	1178	1177	1176	1175	1174	1173	1172	1171	1170	1169	1168	1167	1166	1165	1164	1163	1162	1161	1160	1159	1158	1157	1156	1155	1154	1153	1152	1151	1150	1149	1148	1147	1146	1145	1144	1143	1142	1141	1140	1139	1138	1137	1136	1135	1134	1133	1132	1131	1130	1129	1128	1127	1126	1125	1124	1123	1122	1121	1120	1119	1118	1117	1116	1115	1114	1113	1112	1111	1110	1109	1108	1107	1106	1105	1104	1103	1102	1101	1100	1099	1098	1097	1096	1095	1094	1093	1092	1091	1090	1089	1088	1087	1086	1085	1084	1083	1082	1081	1080	1079	1078	1077	1076	1075	1074	1073	1072	1071	1070	1069	1068	1067	1066	1065	1064	1063	1062	1061	1060	1059	1058	1057	1056	1055	1054	1053	1052	1051	1050	1049	1048	1047	1046	1045	1044	1043	1042	1041	1040	1039	1038	1037	1036	1035	1034	1033	1032	1031	1030	1029	1028	1027	1026	1025	1024	1023	1022	1021	1020	1019	1018	1017	1016	1015	1014	1013	1012	1011	1010	1009	1008	1007	1006	1005	1004	1003	1002	1001	1000	999	998	997	996	995	994	993	992	991	990	989	988	987	986	985	984	983	982	981	980	979	978	977	976	975	974	973	972	971	970	969	968	967	966	965	9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A-714

Name and address Richard M. and Patricia R. Nixon
Schedule 4
567 68 0315

DEPRECIATION

No	Description of Property	Date acquired	Cost or other basis	Previous depreciation	Method used	Estimated life (yrs) or rate (%)	Remaining life (yrs)	YEAR 1967	
								Depreciation allowable this year	
1	MINI-65 COMPUTER	1-69	8186.09	00	SL	10 YEARS		818.60	
2									
3									
4									
5									
6									
7									
8									
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25									
26									
27									
28									
* CHANGED TO CENTRAL 30 YEARS OLD									
Totals								818.60	

return with him in Morgan's office, DeMarco does not think that Barth was there while the deed was re-executed.

DeMarco stated that the appointment with the President was at 12:15 on April 10, 1970. He met Kalmbach outside the President's Oval Office, and at 12:20 they were ushered in to see the President. The President sat behind his desk, DeMarco at the President's left, and Kalmbach across the desk from the President. They chatted about California politics and the law business for about five minutes. Then DeMarco explained to the President the double-entry books and the other aspects of the record-keeping system which he and Blech had set up for the President.

Turning to the tax return, DeMarco pointed to the line on the first page of the return showing the refund due the President and said "That is the bottom line." The President said, "That's fine, that's fine." Then DeMarco explained to the President the major items in the tax return, aside from his salary: the nonrecognition of gain on the sale of his New York apartment, the deductions taken for interest, and pointed to the appraisal by Newman and said, "This, of course, is the appraisal supporting the deduction for the papers which you gave away." The President's response was, "That's fine."

DeMarco said that there was no discussion about the deed giving the papers to the United States. DeMarco told the President that the gift of papers would be a "tax shelter" for several years. The President asked DeMarco facetiously, "Did you get all my deductions?" "I sure tried," replied DeMarco. DeMarco stated there was no in-depth analysis of the tax return while he was with the President, but he said there was no question the President knew he was getting a refund and that the basis for the refund was the deduction taken for the gift of papers.

The President then signed the return, and then he and Kalmbach chatted for a few minutes about items other than the tax return. Then DeMarco told the President that he needed Mrs. Nixon's signature on the return. The President called Mrs. Nixon and told her that DeMarco and Kalmbach were coming up. Kalmbach and DeMarco were escorted to the family quarters to see Mrs. Nixon. She said, "Where do I sign," and signed it in the appropriate space. Then she asked DeMarco and Kalmbach to help pick out one of two busts of General Eisenhower which had been presented to the White House.

After leaving Mrs. Nixon, DeMarco and Kalmbach went back to Morgan's office. DeMarco said he is sure that Kalmbach was with him, although he told us that Kalmbach cannot remember this. In addition to Morgan and Barth, Clinton Walsh, the chief

of the Audit Section of the IRS, was there to receive the President's return. Barth and Walsh looked over the return, checked to see that it was signed, put it back in its envelope, and left.

About two weeks later in April, DeMarco received a telephone call from Barth, who said the return had been checked and approved, and that a refund check was being issued on that day.

12. Descriptive Sheet Attached to Return.

We asked DeMarco who had written the descriptive sheet attached to the return, which gives a brief description of the gift and states that there are no restrictions on the gift. DeMarco says that Blech told him it was a required schedule, that DeMarco wrote it out in longhand and gave it to Blech. DeMarco said that he thought that either he or Blech had been given the President's 1968 return, but DeMarco doesn't think that he (DeMarco) had the 1968 return before doing the 1969 return. DeMarco said that he drafted the descriptive sheet because Blech said that it was required, and in response to the required questions. He did not base it on a similar sheet included in the 1968 return. DeMarco stated that he had had no conversations with Richard Ritzel on the subject of the gift of papers or on the way the gift was reflected in the tax return.

APPENDIX

DOCUMENTS OBTAINED BY IMPEACHMENT INQUIRY STAFF
FROM INTERNAL REVENUE SERVICE
OR
JOINT COMMITTEE ON INTERNAL REVENUE TAXATION

Indistinct document retyped by
House Judiciary Committee staff

WEDNESDAY
NOVEMBER 28 1973
APPOINTMENTS & SCHEDULED EVENTS

After staff at Treasury, I
went in Secy's office w Secy &
Ron Brooks. talked on 3
Subjects -- Bill Williams [item crossed-out
in the original] and
President's tax return. I said in
best interestsof IRS & President for
us to audit. Said Judiciary Committee
& Ways & Means (Joint Comm) about to
go into this & force issue. Secy
said [illegible] go ahead, said he would talk
Gen. Haig. Said lawyers would
cause downfall of Govt.
Secy. Asked re investigations. I mentioned
[crossed out] time problem, work load

[items crossed]
[out in original]
] He would need talking
paper for this.

I told Ron later that [crossed out]
investigation continuing.

Indistinct document retyped by
House Judiciary Committee staff

28

WEDNESDAY

NOVEMBER 28 1973 • 33 Days Left

APPOINTMENTS & SCHEDULED EVENTS

NAME

PLACE

SUBJECT

TO BE DONE TODAY (NUMBER EACH ITEM)

Item
No.
1

After stuff at Treasury, I
 met in Sney's Office w/ Sney &
 Ron Brooke. talked re 3
 subjects - Bill Wilkins, [redacted]
 [redacted] &
 President's [redacted] [redacted]. I said in
 last interview of IRS & President for
 us to audit. Said [redacted] [redacted]
 & [redacted] [redacted] (John [redacted]) [redacted] to
 go into this & [redacted] issues. Sney
 said [redacted] already. Said he would talk
 [redacted] [redacted]. Said [redacted] would
 [redacted] [redacted] [redacted] [redacted].
 Sney asked re investigation. I mentioned
 [redacted] like problem, worked [redacted]

EXPENSE & REIMBURSEMENT RECORD:

Item—
What?Where?
Duration?Purpose—who
What involved?To whom
Paid?Reimbursed?
By whom?

Amount

[redacted]
 [redacted]
 [redacted] He was [redacted] [redacted]
 paper for [redacted]

I told Ron [redacted] that [redacted]
 investigation [redacted]

**REOPENING
MEMORANDUM**

(See instructions at bottom)

REQUEST FOR:☒ **APPROVAL TO
REOPEN A CLOSED
EXAMINED CASE**☐ **ISSUANCE OF FORM
L 153, NOTICE OF
REEXAMINATION**

DISTRICT CODE

52

CONTROL NUMBER (Optional)

TAXPAYER'S NAME AND ADDRESS ON LATEST RETURN (or present
address if different)Richard M. and Patricia R. Nixon
The White House
Washington, D.C. 20500**SECTION A - CLEARANCE RECORD**

TO: (Number block to indicate routing sequence)		DECISION	SIGNATURE	SYMBOLS	DATE CLEARED	ROUTING RETURN	
						Initials	Date
ROUTING	GROUP SUPERVISOR	Approved	Arthur C. Longo	AV:EST-153	12/7/73		
	CHIEF, FIELD (OFFICE) AUDIT BRANCH						
	CHIEF, AUDIT DIVISION	Approved	Charles R. Pham	AV:AC	12-7-73		
	DISTRICT DIRECTOR	Approved	Richard M. Nixon		12-7-73		
	ARC (AUDIT) OR DIRECTOR, OIO						
	OTHER (Specify)						

SECTION B - JUSTIFYING DATE**1. REASON FOR REQUEST (Place an "X" in the appropriate block)**☐ **A. EVIDENCE OF FRAUD, MALFEASANCE, COLLUSION, CONCEALMENT, OR MISREPRESENTATION OF MATERIAL FACT.**☐ **B. SUBSTANTIAL ERROR.**☒ **C. SERIOUS ADMINISTRATIVE OMISSION RESULTING IN CRITICISM, UNDESIRABLE PRECEDENT, OR INCONSISTENT TREATMENT.****2. FACTS**

	FORM NO	YEAR	FORM NO	YEAR
A. TAX RETURN	1040	1971	1040	1972
B. EXPIRATION DATE	041575		041576	
C. METHOD OF PREVIOUS EXAMINATION	FA X	OA	FA X	OA
D. TAX SHOWN ON RETURN OR AS PREVIOUSLY ADJUSTED	\$ 878.03		\$ 4,298.17	
E. ESTIMATED ADDITIONAL TAX	\$ Unknown		\$ Unknown	

3. NARRATIVE JUSTIFICATION (Form 3990-B)

INITIATOR'S SIGNATURE

Richard M. Nixon

TITLE

Vice President

ORGANIZATIONAL SYMBOLS

DATE

12/7/1973

SECTION C - RESULTS (Complete only if case is reopened)**4. DATE OF SUPPLEMENTAL OR REEXAMINATION REPORT****5. TAX RETURN****6. TAX CHANGE**

(Attributed to reopening only)

A. ADDITIONAL TAX**B. OVER ASSESSMENT****INSTRUCTIONS**

REQUEST BLOCK - Check the first block if reopening does not require additional inspection of the taxpayer's books of account or both blocks if such additional inspection is required.

SECTION A - Insert the words "not applicable" if clearance is not required, e.g., Chief, Field Audit Branch, in districts without such position. All individuals approving or disapproving this memorandum must sign.

SECTION B - For the narrative, use the following format: (1) Facts (2) Law (3) Conclusion. Form 3990-B may be used for this purpose. See EFM 4773 for details concerning routing, copy retention and disapproval action.

SECTION C - Indicate whether tax change is agreed or unagreed by entering "A" or "U" in the appropriate column.

Attachment to Form 4505

Richard M. and Patricia R. Nixon

FACTS:

A prior examination had been conducted on the 1971 and 1972 returns of this taxpayer. The taxpayer had a contribution carryover from 1969 to these years for the fair market value of his Vice-Presidential Papers which he contributed to the United States Government. The agent accepted this deduction as proper as the facts indicated that the appraiser was eminently qualified, the fair market value appeared to be proper, and that the contribution was made prior to the change in the law. The agent did not verify the circumstances concerning the actual contribution of these papers to the United States Government.

A no change report was issued on June 1, 1973, but we have now received information which leads us to believe that the taxpayer may not have made a completed gift of the papers prior to July 25, 1969, and would, therefore, not be allowed a deduction for this contribution of \$570,000.00. The deed used to transfer these documents may not have been forwarded to the National Archives until April 1970. The General Services Administration may not have signed the deed transferring title to the papers transported to the Archives in 1969. The documents which were selected to be donated to the Archives may not have been detailed until early 1970. The deed was signed by a counsel to the taxpayer. The taxpayer did not sign the deed although his name was typed in at the appropriate place in the deed for his signature.

The propriety of this transaction is being questioned by members of the news media, public officials, and the general public. Our failure to reopen this case to determine the propriety of this deduction could result in serious criticism of the Service's administration of the tax laws. Sections 4023.2(c), 4023.5(1)(a), IRM.

LAW:

Section 170(a)(1) of the IRC (1954) states that "There shall be allowed as a deduction any charitable contribution (as defined in subsection (c)) payment of which is made in the taxable year." Section 170(c) states, "For purposes of this section, the term 'charitable contribution' means a contribution or gift to or for the use of ... the United States."

Section 1.170-1(b) of the Regulations provides that, "Ordinarily a contribution is made at the time delivery is effected." Section 170 was amended by the Tax Reform Act of 1969. Section 170(e) was added which provides that for any contribution of

Attachment to Form 4505

Richard M. and Patricia R. Nixon

LAW: (continued)

ordinary income and capital gain property, the amount of any charitable contribution of property otherwise taken into account under this section will be reduced by the sum of the amount of gain which would have been long-term capital gain if the property contributed had been sold by the taxpayer at its fair market value... The effective date of this section was made retroactive to July 25, 1969. Briefly stated, the taxpayer would be allowed his basis in the property as a deduction for any personal papers contributed after July 25, 1969. Any contributions of personal papers prior to July 25, 1969, would be allowed at the fair market value of the papers. The pivotal point is, "were these papers given to the United States Government before July 25, 1969?"

In view of the information presently available to us, some doubt now exists on this point. As the prior examination did not cover this aspect of the contribution, and in view of the questions being asked in the news media, permission is hereby requested to reopen these years to determine the validity of this transaction. Failure to do so would result in serious criticism of the Service's administration of the tax laws. Since the prior examination was completed, we have also obtained information concerning other income and expense items which may require examination or reexamination.

December 7, 1973

President Richard M. Nixon
and Mrs. Patricia R. Nixon
The White House
Washington, D. C. 20500

Kind of Tax: Income
Tax Year Ended: December 31, 1971
December 31, 1972

Dear President and Mrs. Nixon:

We are required by law to notify a taxpayer in writing if we need to reexamine his books and records after previously examining them.

Because information that may affect your tax liability has been developed since our latest examination of your books and records, we ask that you make them available to us again, for reexamination.

Thank you for your cooperation.

Sincerely yours,

(Signed) William D. Waters

William D. Waters
District Director

December 7, 1973

President Richard M. Nixon
and Mrs. Patricia R. Nixon
The White House
Washington, D.C. 20500

Type of Tax: Income
Consent Form Number: 372
Taxable Year or Period: December 31, 1970

Dear President and Mrs. Nixon:

While considering your Federal tax return for the year shown above, we found that the limitation period prescribed by law for assessing additional tax will expire soon.

Unfortunately, sufficient time does not remain to permit us to make a thorough and satisfactory audit. You may extend the limitation period by signing all copies of the enclosed form and returning them within ten days from the date of this letter. Upon acceptance of the properly signed forms, we will return one copy to you.

By extending the period of limitation, both you and the Internal Revenue Service will have adequate time to consider any questions or issues which may arise during the examination. In addition, if adjustments are proposed and you do not agree, you will have time to present your views at a conference in the District office and the Regional office.

Thank you for your cooperation.

Sincerely yours,

~~AS:7000~~ William D. Waters

William D. Waters
District Director

Enclosures:
Copies of consent form
Return envelope

Fraud

During the examination of the gift of the Vice-Presidential Papers, we became aware that a deed was used to convey the gift to the National Archives, and a question was raised as to the actual date of the signing of the deed. The deed was dated March 27, 1969, and was allegedly signed on April 21, 1969, by Deputy Counsel to the President, Mr. Edward Morgan. The signature was also allegedly notarized on April 21, 1969, by Mr. Frank DeMarco. Schedule A attached to the deed could not have been obtained until March 20, 1970, as the information contained on Schedule A could not have been available before March 20, 1970, the date the appraiser, Mr. Ralph Newman, had completed his work and informed Mr. DeMarco of the amount of the gift and the items which were to comprise the gift.

Mr. Ralph Newman, the appraiser, presented an appraisal document which indicated that the appraisal of the 1969 papers was made in April 6 - 8, 1969, November 1969, and completed in December 1969. However, we were informed by the employees of the Archives that he did not perform any work in April 1969 on these papers. It was also stated that only Part I of Schedule A was selected by him and that Archival employees made the selections of Part II thru V on March 20, 1970. This appraisal was included on the 1969 return and had been presented to the agents who had previously examined the 1971 and 1972 returns to verify the propriety of the deduction.

4. SECTION OF IRS AUDIT REPORT

In view of the conflicting statements, referral reports were submitted on Mr. Morgan, Mr. DeMarco, and Mr. Newman to the Intelligence Division for consideration of a possible violation of Sections 7206 and 7207 of the Code. Copies of the referral reports are included in the Administrative Section of the Workpapers.

REFERRAL REPORT FOR POTENTIAL FRAUD CASES 74-3290

TO Chief, Audit Div.	DATE	NAME AND ADDRESS OF TAXPAYER Mr. Frank DeMarco Los Angeles, Calif.	SS OR E.I. NO. -	TYPES OF TAX INVOLVED Income
TO Chief, Intell. Div.	DATE			
TO Chief, Audit	DATE			
TO Group Supervisor	DATE			

This case has been reviewed by the Intelligence Division, and action indicated taken →

☐ Closed (Copy of closing report attached)

☐ Rejected (Statement of reasons attached)

☐ Accepted

Assigned to Special Agent (Name):

☐ Please Assign Cooperating Officer

SIGNATURE, CHIEF INTELLIGENCE DIVISION

John F. M. Gentry
/s/ Robert L. Browne

1. REFERRAL REPORT CONCERNS -

☐ UNDERSTATEMENT OF TAXABLE INCOME

FAILURE TO FILE RETURN

☐ FORM(S)

☒ OTHER (Specify)
Sec. 7206, 7207

☐ FAILURE TO COLLECT AND PAY OVER TAX

☐ FAILURE TO MAINTAIN ADEQUATE RECORDS

2. PERSONAL HISTORY

APPROX. AGE 48	APPARENT HEALTH <input type="checkbox"/> GOOD <input type="checkbox"/> POOR	STATUS <input type="checkbox"/> Single <input checked="" type="checkbox"/> Married	Head of household <input type="checkbox"/>	EDUCATION (Highest level) College	NO. OF EXEMPTIONS (Including taxpayer & spouse) -
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SOURCES OF INCOME OF TAXPAYER AND SPOUSE (List principal occupations)

N/A

3. RECORDS WERE KEPT BY - ☐ TAXPAYER ☐ EMPLOYEE ☐ BOOKKEEPING SERVICE ☐ OTHER (Specify) N/A

<input type="checkbox"/> CASH RECEIPTS JOURNAL	<input type="checkbox"/> SALES JOURNAL	<input type="checkbox"/> SUBSIDIARY LEDGERS	<input type="checkbox"/> BANK STATEMENTS	<input type="checkbox"/> PURCHASE INVOICES
<input type="checkbox"/> CASH DISBURSEMENTS JOURNAL	<input type="checkbox"/> GENERAL JOURNAL	<input type="checkbox"/> RECORD OF INVENTORY	<input type="checkbox"/> DEPOSIT TICKETS	<input type="checkbox"/> SALES ORDERS
<input type="checkbox"/> PURCHASES JOURNAL	<input type="checkbox"/> GENERAL LEDGER	<input type="checkbox"/> CANCELLED CHECKS	<input type="checkbox"/> SALES INVOICES	<input type="checkbox"/> SINGLE ENTRY JOURNAL

☐ SINGLE ENTRY
☐ DOUBLE ENTRY
☐ OTHER BASIS (Specify)

☐ COMPLETE
☐ INCOMPLETE

☐ AGREE WITH RETURN
☐ DO NOT AGREE WITH RETURN

☐ CASH BASIS
☐ ACCRUAL BASIS

IN ADEQUATE RECORDS NOTICE SENT
☐ FORM 7020 ☐ FORM 7021

DATE ISSUED

4. TENTATIVE ADDITIONAL TAXABLE INCOME DISCLOSED BY EXAMINATION TO DATE (If excise - Additional taxable sales)

TAXABLE PERIOD	RETURN FORM	PER RETURN	CORRECTED	ADDITIONAL	METHOD USED IN DETERMINATION
		\$	\$	\$	

4a. Show portion of the tentative additional income which is due to purely technical adjustments (Give details)

N/A

5. Statement, if any, taxpayer has made regarding cash-on-hand, gifts, inheritances and non-taxable income.

DIRECTOR
OF INTERNAL REVENUE
RECEIVED

FEB 4 1974

BALTIMORE OFFICE
INTELLIGENCE DIVISION

6. Receipts of taxpayer

☐ ALL DEPOSITED

☐ MOST DEPOSITED

☐ PART DEPOSITED

☐ NONE DEPOSITED

Form 2797 (Rev. 10-72)

Department of the Treasury - Internal Revenue Service

5. REFERRAL REPORT, FEBRUARY 4, 1974, IRS FORM 2797

and reasons for understatement or other noncompliance including explanation, if any, offered by taxpayer.

None

8. Name and address of person preparing return. Frank DeMarco, Los Angeles, Calif.		Were his work papers examined? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
9. Have the proposed adjustments been discussed with either the taxpayer or his representative? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	Attach schedule showing specific items of omitted income →	10. Schedule No. Attached —
11. Has taxpayer or his representative been issued a district conference invitation and furnished with a statement of proposed adjustments or a RAR? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	Attach schedule showing adjustments to prior year returns, if material →	12. Schedule No. Attached —
13. Date, by whom, and how taxpayer was first notified return or returns were being examined by the Internal Revenue Service		
14. Information indicating intent to defraud on the part of the taxpayer, and any other information not covered above (If necessary, attach separate sheet):		

See attached statement

15. Did taxpayer engage legal counsel after examination began? <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> NOT KNOWN			
SIGNATURE, EXAMINING OFFICER <i>Frank B. Forego</i>	GROUP	TEL. NO. 967 3662	DATE 2-4-74
ADDITIONAL COMMENTS OF GROUP SUPERVISOR OR CHIEF, AUDIT DIVISION			

SIGNATURE, GROUP SUPERVISOR <i>A. D. Ologun</i>	DATE 2-4-74
SIGNATURE, CHIEF AUDIT DIVISION <i>Barry J. Chandler for</i>	DATE 2-4-74

DEPARTMENT OF THE TREASURY - INTERNAL REVENUE SERVICE

FORM 2797 (REV. 10-72)

The taxpayer was notified that his returns were being reexamined by a letter from the District Director dated December 7, 1973. This letter was delivered to the White House by the Deputy Commissioner, Mr. Raymond Harless.

The taxpayer is the President of the United States, President Richard M. Nixon. A joint return was filed with Mrs. Patricia Nixon. The years under examination are 1970, 1971, and 1972.

The 1971 and 1972 returns had been previously examined by Revenue Agent Raymond Kuschke and Group Manager G. S. Percuoco of Examination Branch II. A no change report was issued on May 30, 1973 on this examination.

These returns were re-examined as information had been received that a major item of tax consequence, the donation of the taxpayer's Vice-Presidential papers to the U. S. Government, had not been properly handled. The papers were valued at \$576,000 and a charitable deduction was claimed on the 1969 return for this amount. The taxpayer used the maximum charitable deduction and carried over the unused deduction to 1970, 1971, and 1972.

The charitable contribution deduction for the papers donated to the U. S. Government was examined by the agents who performed the prior audit. This verification was necessary to determine if the carryover deduction was proper in the years under examination. Mr. DeMarco was present at the prior examination. He provided the agents with an appraisal report by a Mr. Ralph Newman, a recognized expert in his field, to verify the value of the deduction. The agents were also informed that the papers were delivered to the Archives in Washington, D. C. on March 24 to 27, 1969. This date is very significant in that the law was changed by the Tax Reform Act of 1969 to provide that any contribution of this type of property after July 25, 1969 would not qualify as a deduction. The agents therefore apparently accepted the deduction based on the evidence produced by Mr. DeMarco.

Attached is a statement of the facts as obtained from various individuals contacted during our investigation. Conflicts in these statements exist as noted. These conflicts may indicate that the individuals were attempting to provide false and misleading statements to Internal Revenue Agents.

A large amount of supporting documents are available in our Division for your use upon request.

REFERRAL REPORT FOR POTENTIAL FRAUD CASES

74-3292

TO Chief, Audit Div.	DATE	NAME AND ADDRESS OF TAXPAYER Mr. Edward Morgan Washington, D. C.	SS OR E.I. NO. -	TYPES OF TAX INVOLVED Income
TO Chief, Intell. Div.	DATE			
TO Chief, Audit	DATE			
TO Group Supervisor	DATE			

This case has been reviewed by the Intelligence Division, and action indicated taken

☐ Closed (Copy of closing report attached)☐ Rejected (Statement of reasons attached)

SIGNATURE, CHIEF INTELLIGENCE DIVISION

☐ Accepted☐ Please Assign Cooperating Officer

Assigned to Special Agent (Name):

1. REFERRAL REPORT CONCERNS -

☐ UNDERSTATEMENT OF TAXABLE INCOME☐ FAILURE TO FILE RETURN FORM(S)☐ OTHER (Specify)
Sec. 7206, 7207☐ FAILURE TO COLLECT AND PAY OVER TAX☐ FAILURE TO MAINTAIN ADEQUATE RECORDS

2. PERSONAL HISTORY

APPROX. AGE 35	APPARENT HEALTH <input checked="" type="checkbox"/> GOOD <input type="checkbox"/> POOR	STATUS <input checked="" type="checkbox"/> Single <input type="checkbox"/> Married	Head of household <input type="checkbox"/>	EDUCATION (Highest level) College	NO. OF EXEMPTIONS (Including taxpayer & spouse)
-------------------	---	---	--	--------------------------------------	---

SOURCES OF INCOME OF TAXPAYER AND SPOUSE (List principal occupations)

N/A

3. RECORDS WERE KEPT BY - <input type="checkbox"/> TAXPAYER <input type="checkbox"/> EMPLOYEE <input type="checkbox"/> BOOKKEEPING SERVICE <input type="checkbox"/> OTHER (Specify)					
<input type="checkbox"/> CASH RECEIPTS JOURNAL	<input type="checkbox"/> SALES JOURNAL	<input type="checkbox"/> SUBSIDIARY LEDGERS	<input type="checkbox"/> BANK STATEMENTS	<input type="checkbox"/> PURCHASE INVOICES	
<input type="checkbox"/> CASH DISBURSEMENTS JOURNAL	<input type="checkbox"/> GENERAL JOURNAL	<input type="checkbox"/> RECORD OF INVENTORY	<input type="checkbox"/> DEPOSIT TICKETS	<input type="checkbox"/> SALES ORDERS	
<input type="checkbox"/> PURCHASES JOURNAL	<input type="checkbox"/> GENERAL LEDGER	<input type="checkbox"/> CANCELLED CHECKS	<input type="checkbox"/> SALES INVOICES	<input type="checkbox"/> SINGLE ENTRY JOURNAL	
<input type="checkbox"/> SINGLE ENTRY	<input type="checkbox"/> COMPLETE	<input type="checkbox"/> AGREE WITH RETURN	<input type="checkbox"/> CASH BASIS	INADEQUATE RECORDS NOTICE SENT	
<input type="checkbox"/> DOUBLE ENTRY	<input checked="" type="checkbox"/> INCOMPLETE	<input type="checkbox"/> DO NOT AGREE WITH RETURN	<input type="checkbox"/> ACCRUAL BASIS	<input type="checkbox"/> FORM 7020 <input type="checkbox"/> FORM 7021	
<input type="checkbox"/> OTHER BASIS (Specify)				DATE ISSUED	

4. TENTATIVE ADDITIONAL TAXABLE INCOME DISCLOSED BY EXAMINATION TO DATE (If exercise - Additional taxable sales)

TAXABLE PERIOD	RETURN FORM	PER RETURN	CORRECTED	ADDITIONAL	METHOD USED IN DETERMINATION
		\$	\$	\$	

4a. Show portion of the tentative additional income which is due to purely technical adjustments (Give details)

N/A

5. Statement, if any, taxpayer has made regarding cash-on-hand, gifts, inheritances and non-taxable sources of income.

N/A

DISTRICT DIRECTOR
OF INTERNAL REVENUE
RECEIVED

FFR 4 1974

BALTIMORE OFFICE
INTELLIGENCE DIVISION

6. Receipts of taxpayer

☐ ALL DEPOSITED☐ MOST DEPOSITED☐ PART DEPOSITED☐ NONE DEPOSITED

5. REFERRAL REPORT, FEBRUARY 4, 1974, IRS FORM 2797

apparent reasons for understatement or other noncompliance including explanation, if any, offered by taxpayer.

8. Name and address of person preparing return.		Were his work papers examined? <input type="checkbox"/> YES <input type="checkbox"/> NO
9. Have the proposed adjustments been discussed with either the taxpayer or his representative? <input type="checkbox"/> YES <input type="checkbox"/> NO	Attach schedule showing specific items of omitted income →	10. Schedule No. Attached
11. Has taxpayer or his representative been issued a district conference invitation and furnished with a statement of proposed adjustments or a RAR? <input type="checkbox"/> YES <input type="checkbox"/> NO	Attach schedule showing adjustments to prior year returns, if material →	12. Schedule No. Attached
13. Date, by whom, and how taxpayer was first notified return or returns were being examined by the Internal Revenue Service		
14. Information indicating intent to defraud on the part of the taxpayer, and any other information not covered above (if necessary, attach separate sheet):		

See attached statement

15. Did taxpayer engage legal counsel after examination began? <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> NOT KNOWN			
SIGNATURE, EXAMINING OFFICER <i>Frank B. Lyons</i>	GROUP	TEL. NO. 962 3662	DATE 2-4-74
ADDITIONAL COMMENTS OF GROUP SUPERVISOR OR CHIEF, AUDIT DIVISION			

SIGNATURE, GROUP SUPERVISOR <i>W. P. O'Leary</i>	DATE 2-4-74
SIGNATURE, CHIEF, AUDIT DIVISION <i>Charles J. Charal...</i>	DATE 2-4-74
DEPARTMENT OF THE TREASURY - INTERNAL REVENUE SERVICE	

FORM 2797 (REV. 10-72)

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The charitable contribution deduction for the papers donated to the U. S. Government was examined by the agents who performed the prior audit. This verification was necessary to determine if the carryover deduction was proper in the years under examination. Mr. DeMarco was present at the prior examination. He provided the agents with an appraisal report by a Mr. Ralph Newman, a recognized expert in his field, to verify the value of the deduction. The agents were also informed that the papers were delivered to the Archives in Washington, D. C. on March 24 to 27, 1969. This date is very significant in that the law was changed by the Tax Reform Act of 1969 to provide that any contribution of this type of property after July 25, 1969 would not qualify as a deduction. The agents therefore apparently accepted the deduction based on the evidence produced by Mr. DeMarco.

Attached is a statement of the facts as obtained from various individuals contacted during our investigation. Conflicts in these statements exist as noted. These conflicts may indicate that the individuals were attempting to provide false and misleading statements to Internal Revenue Agents.

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REFERRAL REPORT FOR POTENTIAL FRAUD CASES

74-3291

TO Chief, Audit Div.	DATE	NAME AND ADDRESS OF TAXPAYER Mr. Ralph Newman Chicago, Ill.	SS OR E.I. NO. -	TYPES OF TAX INVOLVED Income
TO Chief, Intell. Div.	DATE			
TO Chief, Audit	DATE			
TO Group Supervisor	DATE			

This case has been reviewed by the Intelligence Division, and action indicated taken →

☐ Closed (Copy of closing report attached)☐ Rejected (Statement of reasons attached)☐ Accepted

Assigned to Special Agent (Name):

☐ Please Assign Cooperating Officer

SIGNATURE, CHIEF INTELLIGENCE DIVISION

John J. M. C. C. C.
for 1st Robert L. Brown

1. REFERRAL REPORT CONCERNS -

☐ UNDERSTATEMENT OF TAXABLE INCOME☐ FAILURE TO FILE RETURN FORM(S)☐ OTHER (Specify)
Sec. 7206, 7207☐ FAILURE TO COLLECT AND PAY OVER TAX☐ FAILURE TO MAINTAIN ADEQUATE RECORDS

2. PERSONAL HISTORY

APPROX. AGE	APPARENT HEALTH <input type="checkbox"/> GOOD <input type="checkbox"/> POOR	STATUS <input type="checkbox"/> Single <input type="checkbox"/> Married	Head of household <input type="checkbox"/>	EDUCATION (Highest level)	NO. OF EXEMPTIONS (Including taxpayer & spouse)
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SOURCES OF INCOME OF TAXPAYER AND SPOUSE (List principal occupations)

3. RECORDS WERE KEPT BY - ☐ TAXPAYER ☐ EMPLOYEE ☐ BOOKKEEPING SERVICE ☐ OTHER (Specify)

<input type="checkbox"/> CASH RECEIPTS JOURNAL	<input type="checkbox"/> SALES JOURNAL	<input type="checkbox"/> SUBSIDIARY LEDGERS	<input type="checkbox"/> BANK STATEMENTS	<input type="checkbox"/> PURCHASE INVOICES
<input type="checkbox"/> CASH DISBURSEMENTS JOURNAL	<input type="checkbox"/> GENERAL JOURNAL	<input type="checkbox"/> RECORD OF INVENTORY	<input type="checkbox"/> DEPOSIT TICKETS	<input type="checkbox"/> SALES ORDERS
<input type="checkbox"/> PURCHASES JOURNAL	<input type="checkbox"/> GENERAL LEDGER	<input type="checkbox"/> CANCELLED CHECKS	<input type="checkbox"/> SALES INVOICES	<input type="checkbox"/> SINGLE ENTRY JOURNAL
<input type="checkbox"/> SINGLE ENTRY	<input type="checkbox"/> COMPLETE	<input type="checkbox"/> AGREE WITH RETURN	<input type="checkbox"/> CASH BASIS	IN ADEQUATE RECORDS NOTICE SENT <input type="checkbox"/> FORM 7020 <input type="checkbox"/> FORM 7021 DATE ISSUED
<input type="checkbox"/> DOUBLE ENTRY	<input type="checkbox"/> INCOMPLETE	<input type="checkbox"/> DO NOT AGREE WITH RETURN	<input type="checkbox"/> ACCRUAL BASIS	
<input type="checkbox"/> OTHER BASIS (Specify)				

4. TENTATIVE ADDITIONAL TAXABLE INCOME DISCLOSED BY EXAMINATION TO DATE (If excise - Additional taxable sales)

TAXABLE PERIOD	RETURN FORM	PER RETURN	CORRECTED	ADDITIONAL	METHOD USED IN DETERMINATION
		\$	\$	\$	

4a. Show portion of the tentative additional income which is due to purely technical adjustments (Give details)

5. Statement, if any, taxpayer has made regarding cash-on-hand, gifts, inheritances and non-taxable sources of income.

DISTRICT DIRECTOR
OF INTERNAL REVENUE
RECEIVED

FFR 4 19/4

BALTIMORE OFFICE
INTELLIGENCE DIVISION

6. Receipts of taxpayer

☐ ALL DEPOSITED ☐ MOST DEPOSITED ☐ PART DEPOSITED ☐ NONE DEPOSITED

5. REFERRAL REPORT, FEBRUARY 4, 1974, IRS FORM 2797

parent reasons for understatement or other noncompliance including explanation, if any, offered by taxpayer.

8. Name and address of person preparing return.		Were his work papers examined? <input type="checkbox"/> YES <input type="checkbox"/> NO
9. Have the proposed adjustments been discussed with either the taxpayer or his representative? <input type="checkbox"/> YES <input type="checkbox"/> NO	Attach schedule showing specific items of omitted income →	10. Schedule No. Attached
11. Has taxpayer or his representative been issued a district conference invitation and furnished with a statement of proposed adjustments or a RAR? <input type="checkbox"/> YES <input type="checkbox"/> NO	Attach schedule showing adjustments to prior year returns, if material →	12. Schedule No. Attached
13. Date, by whom, and how taxpayer was first notified return or returns were being examined by the Internal Revenue Service		
14. Information indicating intent to defraud on the part of the taxpayer, and any other information not covered above (if necessary, attach separate sheet):		

See attached statement

15. Did taxpayer engage legal counsel after examination began? <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> NOT KNOWN			
SIGNATURE, EXAMINING OFFICER <i>Frank B. Longo</i>	GROUP	TEL. NO. 962 8662	DATE 2-4-74
ADDITIONAL COMMENTS OF GROUP SUPERVISOR OR CHIEF, AUDIT DIVISION			

SIGNATURE, GROUP SUPERVISOR <i>J. C. Calogero</i>	DATE 2-4-74
SIGNATURE, CHIEF AUDIT DIVISION <i>Charles Charles</i>	DATE 2-4-74

DEPARTMENT OF THE TREASURY - INTERNAL REVENUE SERVICE

FORM 2797 (REV. 10-72)

The taxpayer was notified that his returns were being reexamined by a letter from the District Director dated December 7, 1973. This letter was delivered to the White House by the Deputy Commissioner, Mr. Raymond Harless.

The taxpayer is the President of the United States, President Richard M. Nixon. A joint return was filed with Mrs. Patricia Nixon. The years under examination are 1970, 1971, and 1972.

The 1971 and 1972 returns had been previously examined by Revenue Agent Raymond Kuschke and Group Manager G. S. Percuoco of Examination Branch II. A no change report was issued on May 30, 1973 on this examination.

These returns were re-examined as information had been received that a major item of tax consequence, the donation of the taxpayer's Vice-Presidential papers to the U. S. Government, had not been properly handled. The papers were valued at \$576,000 and a charitable deduction was claimed on the 1969 return for this amount. The taxpayer used the maximum charitable deduction and carried over the unused deduction to 1970, 1971, and 1972.

The charitable contribution deduction for the papers donated to the U. S. Government was examined by the agents who performed the prior audit. This verification was necessary to determine if the carryover deduction was proper in the years under examination. Mr. DeMarco was present at the prior examination. He provided the agents with an appraisal report by a Mr. Ralph Newman, a recognized expert in his field, to verify the value of the deduction. The agents were also informed that the papers were delivered to the Archives in Washington, D. C. on March 24 to 27, 1969. This date is very significant in that the law was changed by the Tax Reform Act of 1969 to provide that any contribution of this type of property after July 25, 1969 would not qualify as a deduction. The agents therefore apparently accepted the deduction based on the evidence produced by Mr. DeMarco.

Attached is a statement of the facts as obtained from various individuals contacted during our investigation. Conflicts in these statements exist as noted. These conflicts may indicate that the individuals were attempting to provide false and misleading statements to Internal Revenue Agents.

A large amount of supporting documents are available in our Division for your use upon request.

Consideration Of The Assertion Of The 50% Civil Fraud Penalty

Based on the present information available there does not appear to be sufficient evidence to recommend the assertion of the 50% civil fraud penalty in this case.

The following individuals, although interviewed, have not submitted to questioning under oath:

Edward L. Morgan
Ralph Newman

John Erlichman has not been interviewed.

All of the above individuals had direct or indirect contact in the preparation of the tax return and could possibly testify under oath or a grant of immunity and possibly connect the taxpayer with the preparation of the tax return and therefore change our recommendation against the 50% civil fraud penalty.

To date our investigation has revealed the following and for these reasons we feel we could not sustain the 50% civil fraud penalty.

- A - It is obvious that the taxpayer desired to make a gift of his vice presidential papers because of the financial benefit to him for tax purposes. This was legitimately accomplished by the taxpayer with respect to his 1968 Income Tax.
- B - The taxpayer hired Ralph Newman to appraise his papers and paid him \$25,000. Ralph Newman testified relative to his appraisal of the papers. Although there is some conflict with his testimony and others as to the dates he performed this service we feel this conflict is immaterial since the date of appraisal is irrelevant.
- C - Vice presidential papers were delivered to the archives in March 1969.
- D - Edward L. Morgan testified that In April 1969 he signed a deed in California in the presence of Mr. DeMarco. This is corroborated by his former secretary.
- E - Mr. DeMarco was interviewed and corroborated Morgan's testimony.
- F - Mr. DeMarco and Mr. Kalmbach testified that his contact with the White House for financial information was with either Mr. Erlichman or Mr. Morgan.

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- G - Mr. DeMarco has testified that he spent approximately 15 minutes with the taxpayer reviewing the finished return before getting the taxpayer or his wife to sign.
- H - Mr. DeMarco's secretary testified that she remembered typing two deeds, one in March or April 1969, and one in April 1970.
- I - There is no information available linking the taxpayer with the actual preparation of his return.

See attachment

In summary, it is our opinion that to sustain the assertion of the 50% civil fraud penalty on this return it would be absolutely necessary to have affirmative testimony by some, or all of the individuals mentioned above. To date not one of the witnesses has testified in this matter.

INTERNAL REVENUE CODE OF 1954

Policy Statement P-9-5 (Approved 11-19-65). This policy statement is supplemented by Manual Supplement 45G-106 which states in essence the following:

That civil fraud penalties will be recommended for each taxable period where clear and convincing evidence is available to prove that some part of the underpayment of taxes is due to fraud. Such evidence must show intent to evade the payment of tax which the taxpayer believes to be owing as distinguished from a mistake, inadvertance, reliance on incorrect technical advice, honest difference of opinion, negligence or carelessness.

Among the factors to be considered in recommending imposition of the civil fraud penalties are: (a) whether the circumstances are of a flagrant nature and (b) whether the tax due, after pre-payment credits and without adjustment for allowable carry-back or carry-over losses or tax credits from a different year is diminutive.

Fraud Defined - Mere negligence, or ignorance of law, does not constitute fraud. It is necessary to show that there was fraudulent intent to evade tax (.339, .3461, .472). Ordinarily, a taxpayer will not be held liable for fraud penalties if he acts upon advice of counsel, but he must show that he conveyed complete and accurate information to his attorney. (.38)

.209 Accountants Employed - Taxpayers who turned over all books and records to a Certified Public Accountant who prepared their returns were not liable for fraud penalties.

R. B. Bates, 15 TCM 47 Dec. 21,525 (M), TC Memo. 1956-12.

R. H. Hall, (DC) 57-1 USTC 9329.

Camden Wall Paper Co., 26 TCM 254, Dec. 28, 378 (M), TC Memo. 1967-52.

J. Kendzie, 27 TCM 845, Dec. 29,086 (M) TC Memo. 1968-174.

.21 Advice of attorney. The Fraud penalty was not sustained where taxpayer relied on advice of attorney that liquidation dividend was not taxable income.

Jurkiewicz, 14 TCM 1243 TC Memo 1955-318

6. ROBERT BROWNE MEMORANDUM, MARCH 22, 1974

.217 Similarly, even though taxpayer was a lawyer, his failure to report the gain from a sale was due to ignorance of the law and not to fraud with intent to evade taxes.

Hoover, 4 TCM 593, Dec. 14, 606

.42 Mere suspicion of fraud - The court will not sanction an assessment of a fraud penalty on mere suspicion or because the memories of witnesses falter or conflict.

A. Levy, 28 TCM 371 Dec. 29, 519 TC Memo
1969-65

INTERNAL REVENUE CODE OF 1954

CHAPTER 63

ADDITIONS TO THE TAX, ADDITIONAL AMOUNTS AND ASSESSABLE PENALTIES.

Sub-Chapter A

Section 6653 (b) Fraud - If any part of any underpayment (as defined in sub-section (c)) of tax required to be shown on a return is due to fraud, there shall be added to the tax an amount equal to 50% of the underpayment.

The fraud penalty is a remedial civil sanction to safeguard and protect the Revenue and to reimburse the Government for the heavy expense of investigation and loss involved from the taxpayer's fraud.¹

The degree of proof required in civil cases is a preponderance of evidence except where fraud is involved. Clear and convincing evidence is necessary in order to prevail on the fraud issue. Clear and convincing evidence need not be beyond a reasonable doubt, but must be stronger than mere preponderance of evidence.²

Policy Statement P-9-5 (Approved 11-19-65). This policy statement is supplemented by Manual Supplement 45G-106 which states in essence the following:

That civil fraud penalties will be recommended for each taxable period where clear and convincing evidence is available to prove that some part of the underpayment of taxes is due to fraud. Such evidence must show intent to evade the payment of tax which the taxpayer believes to be owing as distinguished from a mistake, inadvertance, reliance on incorrect technical advice, honest difference of opinion, negligence or carelessness.

Among the factors to be considered in recommending imposition of the civil fraud penalties are: (a) whether the circumstances are of a flagrant nature and (b) whether the tax due, after pre-payment credits and without adjustment for allowable carry-back or carry-over losses or tax credits from a different year is diminutive.

¹Helvering V. Mitchell USTC 9152
Kahr V. C.I.R. 1969, 414 F. 2nd 621

²Gladden V. Self 55-1 USTC 9227

Fraud implies bad faith, intentional wrong-doing and a sinister motive and is never imputed or presumed and a court should not sustain findings of fraud on circumstances which at most creates only suspicion.³

Incorrect Returns - Responsibility of filing a correct income tax return is on the taxpayer, but a failure to file a correct return does not necessarily constitute fraud.³

Good Faith - Where taxpayer, acting under improper advice, believed he was adopting legitimate device to avoid taxes, fraud penalty was unauthorized. 2 B.T.A. 637.

Negligence - Although taxpayer was negligent in failing to maintain proper records and in failing to see that the income tax return was accurate, evidence did not establish fraud with an attempt to evade taxes. 32 B.T.A. 813.

Gifts - Although evidence established that gifts of securities by taxpayer were invalid, it did not establish that the gifts were shams designed to evade tax and fraud penalties were not sustained.⁴

³Davis, V. C.I.R. 1950, 184 F. 2nd 86

⁴Joseph V. C.I.R. 1935, 32 B.T.A. 1192

C. C. H. EXCERPTS:

Fraud Defined - Mere negligence, or ignorance of law, does not constitute fraud. It is necessary to show that there was fraudulent intent to evade tax (.339, .3481, .472).

A corporation is responsible for the fraudulent acts of its officers committed in it's behalf and an individual taxpayer cannot escape the penalties of fraud by delegating the preparation of his returns to another. Ordinarily, a taxpayer will not be held liable for fraud penalties if he acts upon advice of counsel, but he must show that he conveyed complete and accurate information to his attorney. (.38)

.209 Accountants Employed - Taxpayers who turned over all books and records to a Certified Public Accountant who prepared their returns were not liable for fraud penalties.

R. B. Bates, 15 TCM 47 Dec. 21,525 (M), TC Memo. 1956-12.

R. H. Hall, (DC) 57-1 USTC 9329.

Camden Wall Paper Co., 26 TCM 254, Dec. 28, 378 (M), TC Memo. 1967-52.

J. Kendzie, 27 TCM 345, Dec. 29,086 (M) TC Memo. 1968-174.

.21 Advice of attorney. The Fraud penalty was not sustained where taxpayer relied on advice of attorney that liquidation dividend was not taxable income.

Jurkiewicz, 14 TCM 1243 TC Memo 1955-318

.217 Similarly, even though taxpayer was a lawyer, his failure to report the gain from a sale was due to ignorance of the law and not to fraud with intent to evade taxes.

Hoover, 4 TCM 593, Dec. 14, 606

.38 Information not given taxpayer's Counsel - The fraud penalty was approved, where taxpayer did not turn over complete information to his counsel who prepared his return.

Green, 11 B.T.A. 278, Dec. 3756

.42 Mere suspicion of fraud - The court will not sanction an assessment of a fraud penalty on mere suspicion or because the memories of witnesses falter or conflict.

A. Levy, 23 TCM 371 Dec. 29, 519 TC Memo
1969-65

.565 Lax bookkeeping methods - Negligent penalties are sustained because of the negligent manner in which the accounts were kept.

Where the taxpayer failed to keep proper records and made no serious effort to assemble and organize facts and data essential to the making of a proper return, the negligence penalty was sustained.

E. Joseph, 29 TCM 1630, Dec. 20, 431 (M), TC
Memo. 1970-347.

A. Scaglione, 31 TCM 312, Dec. 31, 323 (M), TC
Memo. 1972-73.

R. Haman, 31 TCM 466, Dec. 31, 400 (M), TC
Memo. 1972-130.

Similarly, where the method of keeping taxpayer's books, a complete failure of any apparent efforts to maintain accurate records or file correct returns, and the insubstantial nature of the explanations made it impossible to avoid the conclusion that the taxpayer's conduct was negligent.

. Tri-Borough Trans. Corp. 5 TCM 105, Dec. 15, 014.

March 28, 1974

District Director of Internal Revenue
Attention: Chief, Intelligence Division
Baltimore, Maryland

William H. Jackson, Group Manager "01"
Baltimore District Office

FRANK DE MARCO
Los Angeles, California
52740094H

RALPH NEWMAN
Chicago, Illinois
52740097G

EDWARD MORGAN
Phoenix, Arizona
52740098F

This report relates to a request to utilize the procedures for interrogating uncooperative or reluctant witnesses through the use of the investigative power of the Grand Jury in connection with the participation in and activities of the subject taxpayers with respect to the preparation of the 1969 income tax return of President Richard M. Nixon.

This matter has been fully discussed with Donald Alexander, Commissioner of the Internal Revenue Service; Mead Whitaker, Chief Counsel; Leon Higrizer, Director-Enforcement, Criminal; Robert Liken, Regional Counsel, MAR; and David Gaston, Assistant Regional Counsel, Criminal, MAR; and they all concur with the proposed action.

Exhibit 1 is a copy of the body of a Referral Report For Potential Fraud Cases, submitted by the Audit Division, Baltimore District, to the Intelligence Division, Baltimore District, on February 4, 1974 covering the subject taxpayers.

Exhibits 2 through 13 are copies of related documents cited in the Referral Report which cover the activities of the referring Revenue Agents, together with related documents obtained by them during their current examination of President Nixon's 1970, 1971, and 1972 income tax returns.

The subject taxpayers were placed under full scale investigation by the Intelligence Division, Baltimore District, on February 20, 1974.

The point at issue is whether or not the President made a completed gift of certain pre-presidential papers to the United States between January 1, 1969 and July 25, 1969, so that he could avail himself of a charitable deduction on his 1969 income tax return under Section 170 of the Internal Revenue Code.

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Baltimore, Maryland

Frank DeMarco, an attorney and partner in the law firm of Kalmbach, DeMarco, Knapp, and Chillingworth (Los Angeles, California) signed the President's 1969 income tax return as the return preparer. Ralph Newman, an appraiser with offices located in Chicago, Illinois, appraised the papers in question and placed a value of \$576,000 on the papers. Documents covering Newman's appraisal were attached to the President's 1969 income tax return. Edward Morgan, who during this time period was employed as Deputy Counsel to the President, signed for the President the Chattel Deed (Exhibit 14) covering the gifted papers to the United States.

Frank DeMarco was interviewed (Exhibit 15) by the referring Revenue Agents and staff members of the Joint Committee on Internal Revenue Taxation on January 18, 1974. DeMarco, who was not under oath, volunteered the following information at that meeting:

He and Herbert Kalmbach met with Edward Morgan on April 21, 1969 in Los Angeles after hearing from Morgan on either April 14 or 15, 1969 that Morgan was coming to California to cover the San Clemente property, the Foundation of the President, and the gift (of the President's papers). He stated that at the meeting with Morgan on April 21, 1969, that he (DeMarco) had a draft of the Chattel Deed; that the draft had strike overs, and that he did not remember Morgan signing it. DeMarco further stated that on or about April 4, 1969 he spoke with Ralph Newman, and that sometime between April 6 and April 15, 1969 Newman called him and stated that he had segregated "the sensitive stuff". He stated that during October and November 1969, he "hassled" Newman for the appraisal and he (Newman) promised to have it, and that no deadline was set. DeMarco stated that in November 1969, Morgan called him and noted a change in the tax law and mentioned July 25, 1969 as the cutoff date.

Subsequent to the January 18, 1974 interview, DeMarco submitted a memorandum (Exhibit 16) to Dr. Lawrence Woodworth, Joint Committee on Internal Revenue Taxation, in which he advised that:--

Ralph Newman contacted him (DeMarco), probably during the first few days of April 1969, and during the conversation DeMarco advised Newman that the maximum charitable contribution (covered by the gift of papers) that could be absorbed by the President would be approximately \$500,000, and that the \$500,000 figure came up in his first conversation with Mr. Morgan. Mr. DeMarco submits that sometime during the day of his meeting with Morgan on April 21, 1969, it is his recollection that Morgan signed the form of the chattel deed. DeMarco advised that sometime in May 1969, he had a telephone

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conversation with Newman. DeMarco further submitted that at the end of October 1969, he began pressuring Newman a little to have the job done.

DeMarco stated that he contacted Morgan in early 1970 on several occasions to use his influence over Newman, to see that an itemized appraisal be finished in plenty of time to prepare the tax return. On April 7, 1970 he dictated to his secretary the summary schedule (covering the gifted papers) for attachment to the President's 1969 return. He states that it was at this time, upon examining the summary schedule and examining the Schedule A which he had instructed his secretary to prepare on March 27, 1970, that he noticed that the typewriting on these documents and the color and texture of the paper were so substantially different from the type and paper used on the draft deed prepared in April of 1969, that he instructed his secretary to retype the entire chattel deed on the new typewriter which he had been using since mid-1969. It was his (DeMarco's) plan to have the new ribbon copy re-executed by Morgan when he saw him in Washington. On April 10, 1970 he met with Morgan at the Executive Office Building and presented to Morgan the original ribbon copy and two xerox copies of the retyped chattel deed for his re-execution. After completion of the execution by him (Morgan), DeMarco thought he left Morgan one copy and retained the ribbon copy for his (DeMarco's) file. DeMarco did not recall that he had any substantial discussion at the time of the re-execution, except that they concurred in the proposition that it was a restatement of that which they had done in California in April of 1969.

On February 22, 1974 I interviewed Mr. DeMarco under oath (Exhibit 17) in the offices of the Intelligence Division, Los Angeles, California. Mr. DeMarco restated, in substance, what he had submitted in his memorandum to Dr. Woodworth (Exhibit 16). He insisted that Morgan signed the deed on April 21, 1969 and, again, on April 10, 1970; that Morgan was his contact at the White House in assisting in the preparation of the President's 1969 return; that he had conversations with Newman in the spring of 1969 and that he had pressed Newman to finish the appraisal of the papers of the President.

On January 14, 1974 Edward Morgan was interviewed (Exhibit 18) by the referring agents and members of the Joint Committee on Internal Revenue Taxation in Washington, D.C. Mr. Morgan was not under oath during this interview. Mr. Morgan stated that he was sure that he had signed the chattel deed while in California on April 21, 1969 at his meeting with DeMarco and Kalmbach. He then stated he was 98%

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certain that he had signed the deed but could not remember how many copies. He could not recall why he was chosen to sign the deed. He stated he assumed that, as Deputy Counsel for the President, he had the authority to sign the deed. He stated that there was some question in his mind as to whether he signed anything in late 1969 or the spring of 1970. He stated that he did not remember but could have signed the deed again. He again stated that he was sure that he had signed the deed in 1969 but had no recollection of a later deed being signed.

Exhibit 19 is a copy of a memorandum from Edward L. Morgan to Mr. Douglas Parker, with the subject being "President's Papers." In the memorandum, Mr. Morgan states that in April 1969 he made a trip to California regarding several matters. He stated that apparently Mr. DeMarco indicates that he called him and said the President wanted to make a gift of about \$500,000. Mr. Morgan states that he had no reason to doubt this, although he could not have a specific recollection of that call. He stated that on Monday, April 21, 1969, he met with Kalmbach and DeMarco and they drove to San Clemente. He stated that he recalled spending sometime at Kalmbach's law office discussing their work on all the matters on which he was in California. He stated that there was absolutely no question in his mind that he signed the deed of gift for the President at that time. He stated that the thing he can't remember was whether or not there was any particular schedule attached to the deed at that time, and if so, its contents. Mr. Morgan makes no mention of the possibility of his signing the chattel deed in question a second time.

On March 19, 1974, I interviewed Mr. Morgan in Phoenix, Arizona (Exhibit 20). Mr. Morgan, through his counsel (Mr. Richard Van Dusen), would not submit to a question and answer statement under oath or submit an affidavit. Mr. Morgan advised that he was never under the impression that it was his responsibility or assignment to take care of the 1969 tax work of President Nixon. As far as he was concerned, the only thing he was ever assigned to do covering the President's 1969 income tax situation concerned the gift of the papers of the President. He stated that on his meeting with DeMarco and Kalmbach on April 21, 1969, he expected a chattel deed to be there, in Mr. DeMarco's office, when he got there, and that it was his intention to sign the deed. He now recalls with 100% certainty that he did sign a chattel deed covering the President's papers and an affidavit giving him the authority to do such. Mr. Morgan stated he could not recall who had given him this authority and, quite possibly, he assumed the authority. He did not recall having had any conversations

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with DeMarco prior to the April 21st meeting. He stated that he brought no receipts of any kind to furnish Mr. DeMarco covering the aforementioned gift of papers. When asked if a figure of \$500,000 covering the gift for 1969 had been brought to his attention by any individual during 1969, Mr. Morgan stated that he could not specifically recall that such a figure had been brought up to him. However, it was his opinion that if it had been brought up during that period, he felt that John Ehrlichman would have given him that figure. Mr. Morgan stated that he did not retain Ralph Newman to do the appraisal work on the President's papers for 1969 and has no idea who, in fact, retained Mr. Newman. Morgan could not recall talking to Newman or meeting with Newman during 1969 but stated it would not surprise him if he had. If he had had conversations with Newman, Morgan could not recall what the conversations had to do with.

Morgan stated that after his visit with DeMarco on April 21, 1969, he could not remember any specific conversation with DeMarco throughout that year. He stated that, to his memory, he had nothing whatsoever to do with the President's tax return after the April 21, 1969 visit with DeMarco. Mr. Morgan advised that on approximately July 4, 1969 his assignments in the White House were changed, wherein he became a "domestic advisor" to the President, and was quite certain after that period of time, he had little or no time to be assigned the responsibility for the President's tax return for that year. When asked if he recalled signing a second chattel deed covering the President's papers for 1969, Morgan stated he does recall having signed them a second time but cannot recall specifically signing them on Mr. DeMarco's visit to the White House on April 10, 1969. Morgan stated further that he had no knowledge that there was or would be a July 23, 1969 cutoff date for gifts of papers as a charitable contribution.

On January 17, 1974 Ralph Newman was interviewed by the referring agents and members of the Joint Committee on Internal Revenue Taxation (Exhibit 21). Newman stated that Frank DeMarco called him during the first few days of April 1969. He stated that he knew before from someone, either DeMarco or Morgan, had mentioned a gift of \$500,000. He stated he was sure he was told that they were contemplating a \$500,000 gift. He stated that on April 8, 1969 he saw Sherrod East at the Archives and saw the mass of material (the 1969 gift) other than the 1968 papers. On November 3, 1969 Newman stated he made an estimate of the total value of the 1969 gift and then made a detailed examination of that necessary to make the deed of gift. He stated, as far as he was concerned, everything was collected by

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December 8, 1969 in his mind but he did not notify anybody. When asked when he made a list, which is the basis for Schedule A which covers the 1969 gift, Morgan stated again that he had selected them in 1969. He stated that he did not give DeMarco the \$576,000 figure prior to March 27, 1970.

On January 7, 1974 Mr. Newman submitted a letter (Exhibit 22) to Albert Calogero, Internal Revenue Agent, and stated, in part, that he had been informed that the President would want to make a gift of around \$500,000, and that this gift was to be selected from the materials that had been delivered to the National Archives, if there was sufficient materials to justify an appraisal for that amount. He further stated that on April 8, 1969 he merely visited the area where the large collection of unsorted or unorganized material had recently been placed (the 1969 papers). He states further, it was obvious from the sheer volume that there would be more than enough to cover the 1969 gift requirement for \$500,000. He stated further that he did not segregate or direct the segregation of the material at this time. He stated that he made this information known to Mr. DeMarco, returned to Chicago, and on April 10, 1969 completed the 1968 appraisal document.

On March 4, 1974 I interviewed Ralph Newman in the offices of the Intelligence Division in Washington, D.C. (Exhibit 23). Mr. Newman, through advice of counsel, would not agree to a question and answer statement under oath or to giving an affidavit. Mr. Newman identified a copy of the appraisal he had prepared covering his appraisal of the President's 1969 papers (Exhibit 24). Mr. Newman then stated that the 1969 appraisal was an incorrect statement and not a false statement. He stated that he did not review the 1969 papers on April 8, 1969 as they were still in their original cartons, being unpacked by the Archival personnel, and were located in a different part of the building. He stated, in fact, that the 1968 appraisal of the President's papers, which he submitted and were subsequently attached to the President's 1968 return, were incorrect in that he listed only one date as doing appraisal work, which was a December 1968 date, when, in fact, he had appraised the 1968 papers in December of 1968 and again on April 8, 1969. Newman stated that during the period, April 1969 to September 1969, he was in Japan and subsequently in Australia, and called Mr. Ritzell of the law firm of Mudge-Rose, located in New York. He states that as of that date, he was under the impression that Mr. Ritzell's firm was handling the President's papers. Newman stated that on October 31, 1969 he received a phone call from Frank DeMarco who identified himself as the President's attorney. Newman stated that this was the first time he ever spoke to DeMarco and would testify to that fact. Newman stated that he, in that telephone conversation,

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Attention: Chief, Intelligence Division
Baltimore, Maryland

was advised by DeMarco that he was being retained by DeMarco to appraise the 1969 papers. He stated that he had little or no contact with DeMarco concerning the President's papers. During November and the early part of December 1969, he went to the National Archives and evaluated the 1969 papers. On December 8, 1969 Newman stopped his appraisal of the papers, at which time he had set a value of approximately \$435,000. Since there was a lack of communication from DeMarco, Newman stated he simply stopped the appraisal. He stated that on December 24, 1969 he telephoned DeMarco and advised him that the year was coming to a close, and in light of the new legislation, he asked exactly what DeMarco wanted him to do. Newman stated that DeMarco replied to him in the same manner as always-- "I will check on it" or "I will get back to you." Newman stated that he asked DeMarco as of what date did he (DeMarco) intend to give the gift. Newman stated that he received no answer to that question.

On March 27, 1970 Newman stated that DeMarco called him and advised him that the 1969 papers were delivered on or about March 27, 1969 to the National Archives. Newman stated that DeMarco advised him to prepare the necessary appraisal documents and define the gift. Newman further stated that this was the first time a definite discussion of a 1969 gift and what papers would encompass the gift, was brought up. Newman stated that he advised DeMarco at that time that he would have to return to the Archives to get more material for the 1969 gift value of \$500,000. Newman stated that, per DeMarco's request, he hurriedly selected additional documents, with the assistance of Mary Livingston of the National Archives, and on April 6, 1970 signed an affidavit and an appraisal for the 1969 papers. This affidavit and appraisal was prepared by his secretary. Since there was a time element involved, Newman stated that his secretary mistakenly entered the dates of April 6th to the 8th, 1969 and he, unknowingly, signed the appraisal. Newman stated he knew he performed work on the Nixon papers on that day (April 6th to April 8th, 1969) but failed to recognize that the work performed on those dates were on the 1968 papers. Newman stated that he submitted the appraisal document to DeMarco but that he never discussed the July 1969 cutoff date concerning gifts with anyone but DeMarco. Newman stated that he could not recall any discussion with Morgan or anyone else concerning the value (\$500,000) of the gift prior to October 31, 1969. Newman stated that, if asked, he would testify that he never discussed a \$500,000 value with anyone prior to the fall of 1969 or, more practically, the spring of 1970.

- 8 -


District Director of Internal Revenue
Attention: Chief, Intelligence Division
Baltimore, Maryland

On March 7, 1974 Herbert Kalmbach was interviewed in Washington, D.C. (Exhibit 25). Kalmbach stated that he had nothing whatsoever to do with the preparation of the President's 1969 income tax return or with the gift of the President's papers. He stated that this was the responsibility of his partner, Frank DeMarco, and that he had no knowledge of anything concerning these issues.


Exhibit 26 are copies of Herbert Kalmbach's diary covering his activities concerning the preparation of the President's 1969 income tax return. The diary's notations indicate that he was in contact with John Ehrlichman concerning this matter and also with Edward Morgan and Roger Barth, an Internal Revenue Service employee. Kalmbach has not been interviewed again and confronted to explain the notations set forth in his diary entries. Attempts have been made to interview John Ehrlichman, but as of the date of this memorandum, he has not made himself available for interview.

As set forth in this memorandum, inconsistencies abound between the early testimony and subsequent testimony of Messrs. DeMarco, Newman and Morgan. There are indications now that Mr. Kalmbach and Mr. Ehrlichman, quite possibly, were involved in the gift issue of the President, together with the preparation of the President's income tax return for the year 1969. Because of these inconsistencies and the reluctance of the various individuals to go under oath or, in fact, be interviewed, it is believed that the true story concerning the gift of the President's papers and the preparation of his 1969 income tax return can only be arrived at by the use of a Grand Jury proceeding.

It is recommended that a Grand Jury investigation of Frank DeMarco, Ralph Newman, Edward Morgan, John Ehrlichman and Herbert Kalmbach be instituted with a view towards determining violations by them or any one of them for violation of Section 7206(2) with respect to the 1969 income tax return of President Richard M. Nixon.


William N. Jackson
Group Manager "01"

APPROVED FOR FORWARDING TO
THE OFFICE OF REGIONAL COUNSEL, MAR


Robert L. Browne
Chief, Intelligence Division
Baltimore District Office

Indistinct document retyped by
House Judiciary Committee staff

APR 2 1974

Honorable Leon Jaworski
Special Prosecutor
Office of Watergate Special
Prosecution Force
1425 K Street, N. W.
Washington, D. C. 20005

Dear Mr. Jaworski:

This is to confirm the discussion at our meeting on March 29, 1974. As the Chief Counsel and I indicated at that time, the Internal Revenue Service has conducted an investigation into the possible violation of Section 7206(2) of the Internal Revenue Code rising out of the preparation of the 1969 income tax return of President Richard M. Nixon. In particular, the investigation has focused on the activities of Frank DeMarco, Ralph Newman, Edward Morgan, John Ehrlichman and Herbert Kalmbach with respect to the charitable deductions for the gift of pre-presidential papers to the National Archives. We have been unable to complete the processing of this matter in view of the lack of cooperation of some of the witnesses and because of many inconsistencies in the testimony of individuals presented to the Service. The use of grand jury process should aid in determining all of the facts in this matter. It is our opinion that a grand jury investigation of this matter is warranted, and because this investigation will involve presidential appointees, we believe it would be appropriate for it to be carried forward by your office.

I understand that on April 1, Mr. David D. Gaston of the Mid-Atlantic Regional Office delivered to you the special agent's report and related exhibits compiled during this investigation. If on the basis of these materials you determine to proceed with a grand jury investigation, the Internal Revenue Service will provide all possible cooperation.

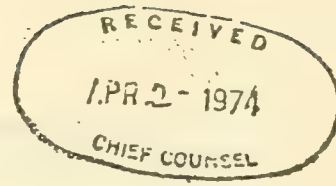
Please return the files to this office after they have served their purpose.

I would appreciate it if you would advise me of your conclusions in this matter.

Sincerely,

Donald C. Alexander

Indistinct document retyped by
House Judiciary Committee staff



APR 2 1974

Honorable Leon Jaworski
Special Prosecutor
Office of Watergate Special
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1425 K Street, N. W.
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I would appreciate it if you would advise me of your conclusions in this matter.

Sincerely,

Donald C. Alexander

Donald C. Alexander

Indistinct document retyped by
House Judiciary Committee staff

Telephone: 962-3084

April 2, 1974

President Richard M. Nixon
and Mrs. Patricia R. Nixon
The White House
Washington, D.C. 20500

Kind of Tax: Income
Tax Year Ended: December 31, 1969
December 31, 1970
December 31, 1971
December 31, 1972

Dear President and Mrs. Nixon:

The examination of your income tax returns for the years 1969, 1970, 1971 and 1972 has been completed and we have enclosed a copy of our examination report explaining why we believe an adjustment of your tax liability is necessary.

If you accept our proposed adjustments, please sign and return the enclosed agreement form which has been prepared for the years 1970, 1971 and 1972.

If you do not agree, you may request a hearing before the Appellate Division of the Regional Commissioner's office. If you prefer, you may request a conference with a member of our conference staff to discuss the proposed adjustments.

To arrange a hearing or a conference you should submit a written protest in accordance with the enclosed instructions, and your request should be made within thirty (30) days from the date of this letter.

Indistinct document retyped by
House Judiciary Committee staff

Indistinct document retyped by
House Judiciary Committee staff -2-

President Richard M. Nixon
and Mrs. Patricia R. Nixon

If we do not hear from you within 30 days, we will have no alternative but to process your case on the basis of the adjustments shown in the examination report.

With respect to your 1969 Federal Income Tax Return, the statutory period during which we can legally assess and enforce collection has expired. The enclosed report of examination of this year reflects our determination of what would have been due had the statute not expired. The report for the year 1969 is furnished for information purposes only. There is no legal obligation on your part to pay the deficiency shown.

Thank you for your cooperation.

Sincerely yours,

/s/ Gerald G. Portney

District Director

Enclosures:
Examination Report
Agreement or Waiver Form
Instructions

Indistinct document retyped by
House Judiciary Committee staff

Telephone: 952-3084

April 2, 1974

President Richard M. Nixon
and Mrs. Patricia R. Nixon
The White House
Washington, D. C. 20500

Kind of Tax: Income
Tax Year Ended: December 31, 1969
December 31, 1970
December 31, 1971
December 31, 1972

Dear President and Mrs. Nixon:

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If you do not agree, you may request a hearing before the Appellate Division of the Regional Commissioner's office. If you prefer, you may request a conference with a member of our conference staff to discuss the proposed adjustments.

To arrange a hearing or a conference you should submit a written protest in accordance with the enclosed instructions, and your request should be made within thirty (30) days from the date of this letter.

- 2 -

President Richard M. Nixon
and Mrs. Patricia R. Nixon

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Thank you for your cooperation.

Sincerely yours,

/s/ Gerald G. Portney

District Director,

Enclosures:
Examination Report
Agreement or Waiver Form
Instructions

9. ATTACHMENT TO GERALD PORTNEY LETTER

FORM 870 (REV. JUNE 1969)	DEPARTMENT OF THE TREASURY - INTERNAL REVENUE SERVICE WAIVER OF RESTRICTIONS ON ASSESSMENT AND COLLECTION OF DEFICIENCY IN TAX AND ACCEPTANCE OF OVERASSESSMENT	DATE RECEIVED BY INTERNAL REVENUE SERVICE
------------------------------	---	---

Pursuant to section 6213(d) of the Internal Revenue Code of 1954, or corresponding provisions of prior internal revenue laws, the undersigned waives the restrictions provided in section 6213(a) of the Internal Revenue Code of 1954, or corresponding provisions of prior internal revenue laws, and consents to the assessment and collection of the following deficiencies with interest as provided by law. The undersigned also accepts the following overassessments as correct:

DEFICIENCIES Section 6653(a)			
YEAR ENDED	KIND OF TAX	AMOUNT OF TAX	PENALTY
12/31/70	Income	\$ 90,114.46	\$ 4,505.72
12/31/71	Income	92,829.30	4,641.47
12/31/72	Income	88,204.96	4,410.25
OVERASSESSMENTS			
YEAR ENDED	KIND OF TAX	AMOUNT OF TAX	PENALTY

RECEIVED

APR 26 1974

DISTRICT DIRECTOR OF INTERNAL REVENUE
BALTIMORE

NAME AND ADDRESS OF TAXPAYER(S) (Number, street, city or town, State, ZIP Code)

Richard M. and Patricia R. Nixon
The White House
Washington, D. C. 20500

(The Internal Revenue Service does not require a seal on this form, but if one is used, please place it here.)

Signature(s)	<i>Richard M. Nixon</i>	DATE 4/3/74
	<i>Patricia R. Nixon</i>	DATE 4/3/74
	TITLE	DATE
BY		

NOTE: The execution and filing of this waiver will expedite the adjustment of your tax liability. It is not, however, a final closing agreement under section 7121 of the Internal Revenue Code and does not preclude assertion of a further deficiency in the manner provided by law if it is later determined that additional tax is due; nor does it extend the statutory period of limitation for refund, assessment, or collection of the tax.

Furthermore, execution and filing of this waiver will not preclude the taxpayer's filing under section 6511 of the Code a timely claim for refund or credit, on which (if disallowed by the Service) suit may be brought in the appropriate District Court or the U.S. Court of Claims.

If this waiver is for a year for which a JOINT RETURN

one, acting under a power of attorney, signs as agent for the other.

If the taxpayer is a corporation, this waiver must be signed with the corporate name followed by the signature and title of the officer(s) duly authorized to sign.

This waiver may be signed by the taxpayer's attorney or agent provided his action is specifically authorized by a power of attorney which, if not previously filed, must accompany the form.

If this waiver is signed by a person acting in a fiduciary capacity (such as executor, administrator, trustee, etc.), Form 56, "Notice of Fiduciary Relationship," should, unless previously filed, accompany this form.

FORM 4549-A (DEC. 1970)		DEPARTMENT OF THE TREASURY - INTERNAL REVENUE SERVICE INCOME TAX AUDIT CHANGES		Page _____ of _____ Pages RETURN FORM NO. 1040	
NAME AND ADDRESS OF TAXPAYERS Richard M. & Patricia R. Nixon The White House Washington, D. C. 20500		S.S. NO. 567-63-0515		FILING STATUS Married	
				Filing Joint Return	
		PERSON WITH WHOM AUDIT CHANGES WERE DISCUSSED Name and title Kenneth Gemmill H. Chapman Rose Peter Work		P/A	
				P/A	
				P/A	
1. ADJUSTMENTS TO INCOME		Year: 1969	Year:	Year:	
a. Contributions other than Cash - Papers		95,298.45			
b. GSA Expenditures to San Clemente		29,344.64			
c. GSA Expenditures to Key Biscayne		2,499.94			
d. Depreciation Decreased - Key Biscayne		69.52			
e. Depreciation & Business Expenses-SanClemente		4,699.62			
f. Income Increased-Use of Government Airplanes		4,001.45			
g. Total Adjustments from Page 2		92,527.98			
2. TOTAL ADJUSTMENTS		228,441.60			
3. ADJUSTED TAXABLE INCOME SHOWN ON RETURN		147,826.42			
4. CORRECTED ADJUSTED TAXABLE INCOME		376,268.02			
5. TAX		234,367.61			
6. ALTERNATIVE TAX IF APPLICABLE (From Page <u>3</u>)		200,693.69			
7. TAX SURCHARGE 10%		20,069.37			
8. CORRECTED TAX LIABILITY (Lesser of line 5 or 6, plus line 7)		220,763.06			
9. LESS CREDITS (Specify)	a.	---			
	b.	---			
	c.	---			
10. BALANCE (Line 8 less amounts on lines 9a through 9c)		220,763.06			
11. PLUS:	a. Tax from recomputing prior year investment credit	---			
	b. Self-employment tax	---			
	c.	---			
12. TOTAL CORRECTED INCOME TAX LIABILITY (Line 10 plus amounts on lines 11a through 11c)		220,763.06			
13. TOTAL TAX SHOWN ON RETURN OR AS PREVIOUSLY ADJUSTED		72,682.09			
14. STATUTORY DEFICIENCY OR OVERPAYMENT (Difference between lines 12 and 13)		148,080.97			
15. PENALTIES					

OTHER INFORMATION

This report of examination for 1969 reflects our determination of what would have been due had the statute not expired. The report is furnished for information purposes only. There is no legal obligation on your part to pay the deficiency shown.

EXAMINING OFFICER'S SIGNATURE <i>Albert Calogero</i>	DISTRICT Baltimore	DATE April 2, 1974
---	-----------------------	-----------------------

FORM 4519-A
(DEC. 1970)DEPARTMENT OF THE TREASURY - INTERNAL REVENUE SERVICE ()
INCOME TAX AUDIT CHANGESRETURN FORM NO
1040

NAME AND ADDRESS OF TAXPAYERS

Richard M. and Patricia R. Nixon
The White House
Washington, D. C. 20500

S.S. No. and NUMBER

567-68-0515

FILING STATUS Married

Filing Joint Return

PERSON WITH
WHOM AUDIT
CHANGES
WERE
DISCUSSED

Name and title

Kenneth Gemmill

P/A

H. Chapman Rose

P/A

Peter Work

P/A

1. ADJUSTMENTS TO INCOME

Year:

1970

Year: 1971

Year 1972

a. Contributions other than Cash - Papers

123,959.28

128,663.37

134,093.77

b. GSA Expenditures to San Clemente

16,301.92

13,308.21

-0-

c. GSA Expenditures to Key Biscayne

1,580.00

2,040.70

2,313.12

d. Income Increased-Sale of Florida Lots

5,808.30

e. Sale of San Clemente Property

54,581.50

f. Royalty Income Increased

10,384.50

X Total Adjustments from Page 2

25,144.90

15,682.03

30,460.19

2. TOTAL ADJUSTMENTS

221,567.60

170,083.81

172,675.38

3. ~~UNCORRECTED~~ TAXABLE INCOME SHOWN ON RETURN

(46,114.36)

5,358.06

19,707.77

4. CORRECTED ~~TAXABLE INCOME~~ OR TAXABLE INCOME

175,453.24

175,441.87

192,383.15

5. TAX

94,088.20

94,080.47

105,724.37

6. ALTERNATIVE TAX IF APPLICABLE (From Page 3)

88,091.00

93,122.33

92,503.13

7. TAX SURCHARGE

1970 - 2.5%

2,202.28

8. CORRECTED TAX LIABILITY (Lesser of line 5 or 6, plus line 7)

90,293.28

93,122.33

92,503.13

9. LESS
CREDITS
(Specify)

a.

b.

c.

10. BALANCE (Line 8 less amounts on lines 9a through 9c)

90,293.28

93,122.33

92,503.13

11. PLUS: a. Tax from recomputing prior year investment credit

b. Self-employment tax

538.20

585.00

c. Minimum Tax Form 4625

75.79

12. TOTAL CORRECTED INCOME TAX LIABILITY (Line 10 plus amounts on lines 11a through 11c)

90,907.27

93,707.33

92,503.13

13. TOTAL TAX SHOWN ON RETURN ~~UNCORRECTED TAX LIABILITY~~

792.81

878.03

4,298.17

14. STATUTORY DEFICIENCY ~~UNCORRECTED TAX LIABILITY~~ (Difference between lines 12 and 13)

90,114.46

92,829.30

88,204.96

15. PENALTIES

Section 6653(a)

4,505.72

4,641.47

4,410.25

OTHER INFORMATION

(A) Maximum tax on earned income from Form 4726

(B) Maximum tax on earned income from Form 4726

EXAMINING OFFICER'S SIGNATURE

DISTRICT

DATE

Albert C. Calogian

4/2/74

FORM 4549-A (12-70)

ARGUMENTS

Notwithstanding the fact that the taxpayer's 1971 and 1972 returns were subjected to a prior audit by the Internal Revenue Service with no discrepancies found, it is recommended that the addition to the tax provided by Section 6653(a) of the Code be applied to each of these years as well as 1970. It is noted that the taxpayer was issued a complimentary "no change" letter at the conclusion of the first audit, hence the burden of showing negligence shifts to the Government for these years (See Estate of Albert D. Phillips TCM 1955-No. 139; and, L. L. Washburn, 44 TC 217 - 1965).

Analysis of the case law dealing with Section 6653(a), IRC, clearly indicates that each decision rests on a unique factual circumstance from which no firm rules other than general directives can be drawn.

The following general circumstances must be considered here:

- (1) The taxpayer was a practicing attorney prior to the Presidency.
- (2) He allowed his personal tax affairs to be handled by others.
- (3) It cannot be concluded from the testimony the depth of the taxpayer's knowledge concerning the details of the tax returns.

At this time, we do not know what transpired at the meetings in which the returns were given to the taxpayer for review and execution. The attorneys are claiming privilege and will not discuss their meetings without a written waiver from the client. Although the waiver is to be given, we have not been able to obtain this information as yet.

- (4) The records, although complete in most areas, were not sufficiently detailed to enable the Service to make concrete conclusions regarding includibility of imputed income and deductibility of expenses.
- (5) The handling of the gift lacks the conclusiveness required of a prudent and capable attorney as was indicated in the 1968 year. Delay in the submission

of the deed to the donee until April 1970 seems to indicate a lack of required diligence on the part of the taxpayer and his agents.

- (6) There were no clear directives by the taxpayer to his Staff, personal attorneys, and accountants to ensure that all aspects of his personal finances and the preparation of the returns would be accurate.

For example:

- (a) No gift tax returns were filed for 1969 or 1970 reporting the large charitable gift because no delegation to do so was issued.
- (b) The duties of the agents were not coordinated. The accountant assumed records regarding business expenses were being maintained by the White House Staff and vice versa.

Generally, a taxpayer cannot escape his duty of filing an accurate return by placing responsibility upon an agent. (See William F. Pohlen, 165F 2^d 258, 36 AFTR 520,) This is especially true where the taxpayer fails to furnish his agent with all pertinent data. Even if all data are furnished to the preparer, the taxpayer still has a duty to read the return and make sure all income items are included.

11. SECTION OF IRS AUDIT REPORT

After considering all the facts and circumstances, as outlined above, the addition to the tax under Section 6653(a) of the Internal Revenue Code of 1954 is recommended for each of the years 1970, 1971 and 1972.

We have discussed this issue with the Office of the Assistant Commissioner (Technical) and it was jointly concluded that a substantial case exists for recommending addition to the tax under Section 6653(a), IRC.

Congress of the United States

JOINT COMMITTEE ON INTERNAL REVENUE TAXATION

Washington, D.C. 20515

QUESTIONS FOR PRESIDENT NIXON

I. Income Tax Deduction for the Gift of Papers

1. Could you give us a general explanation of your discussion with President Johnson about gifts of papers to the Government?

a. Did he tell you that there was a tax advantage in making such gifts?

b. Did he describe the manner in which his papers were handled by the National Archives and how he gave each year a portion of his papers stored there? In what terms did he describe these procedures?

c. Did he indicate how his attorneys determined the amount of the gifts to be given each year?

d. Did he tell you who his appraiser was and what the appraiser did? Could you describe what was said in this regard?

e. Did he volunteer, or did you request, that someone on his staff brief a member of your staff on the handling of pre-presidential papers? Did you subsequently ask a member of your staff to inquire of either President Johnson's staff or the National Archives personnel about the procedures used by President Johnson with respect to his papers?

2. 1968 Deed

a. Did you review two versions of a deed? If so, could you describe the differences in the two versions?

b. Why did you select the version of the deed you signed?

Congress of the United States
JOINT COMMITTEE ON INTERNAL REVENUE TAXATION
Washington, D.C. 20515

c. Were you concerned that the restrictions contained in the deed might affect the valuation of the gift? Did you recognize any other problems in the restrictions? If so, or if not, why?

3. Discussions with John Ehrlichman

a. Did you tell John Ehrlichman of your intent to make a gift of papers? Did you tell him you wanted to use up the maximum available charitable deduction for 1969? Did you tell him you wanted to give enough to provide a carryover to future years? If you informed him of any of this, when did you tell him? If you did so before July 25, 1969, what reason did you have for doing so this early in the year?

b. If you did give him any of the information referred to above before July 25, 1969, did you discuss when during the year the gift should be made? What reason did you have in early 1969 for wanting the gift to be made significantly earlier than December 31, 1969?

c. If you did not discuss any of the matters referred to above with John Ehrlichman, did you discuss them with anyone else?

4. Did you ever have direct conversations with Edward Morgan about your intent of making gifts of your papers in 1969? If so, what instructions, if any, did you give him?

5. Did you personally ever compute the amount that you wanted to donate?

a. If so, how did you determine the amount?

b. If not, how was the amount to be donated determined and who determined it?

c. When did you decide the amount you wanted to give in 1969?

6. Presidential Library

a. Did you intend to establish a Richard M. Nixon Presidential Library to be the depository for your papers and personal effects?

Congress of the United States
JOINT COMMITTEE ON INTERNAL REVENUE TAXATION
Washington, D.C. 20515

b. Early in 1969 did you intend to make your donation of papers directly to the Richard M. Nixon Presidential Library?

c. Did you intend to make a gift of any portion of your papers in 1969 before the establishment of your presidential library? If so, why?

7. Courtesy Storage at the National Archives

a. Were you aware of the storage services provided by the National Archives to previous Presidents?

b. Did President Johnson tell you, or are you aware, of any discussions between your staff and his staff concerning the storage services provided to Presidents by the National Archives?

c. Did you realize that storage would be provided by the National Archives whether or not a gift was made?

1969 8. Discussions on Tax Status of Papers after July 25,

a. Did you discuss with any member of your staff or anyone else the tax consequences of the delivery of your pre-presidential papers to the National Archives on March 26-27, 1969? If so, with whom?

b. Did you have any discussions with any member of your staff about the provisions in the House and Senate versions of the Tax Reform Act of 1969 relating to gifts of papers? If so, did you instruct or otherwise ask them to inquire about these provisions? Did you in any respect indicate an interest that any member of your staff discuss this matter with the Treasury Department or any Member of Congress or anyone else? If so, who, and what were your instructions?

c. Between July 25, and December 31, 1969, were you advised by any member of your staff or other person that some or all of the papers delivered to the National Archives had been donated before July 25, 1969? If so, who advised you and when? How were you told the gift had been made?

Congress of the United States
JOINT COMMITTEE ON INTERNAL REVENUE TAXATION
Washington, D.C. 20515

d. When and by whom were you first told of the value of all of your papers and other materials stored at the National Archives? When were you first aware of the value of the 1969 gift or of the amount of gift which would maximize the tax benefit of the gift? Who so informed you?

9. Discussions about Pre-presidential Papers after 1969

a. In 1970, did any member of your staff or any other person ask whether you intended to claim a deduction for your donation of papers on your 1969 tax return?

10. 1969 Deed

a. Did you give Edward Morgan a power-of-attorney in general, or specifically, to sign your name on any deeds of gift of your papers?

b. Were you ever consulted or informed about a deed of gift for your 1969 papers? If so, by whom and when? Please describe what was said by all parties.

c. When were you aware that a deed had been signed on your behalf by Edward Morgan?

11. Signing of Tax Return on April 10, 1970

a. Who was with you when the tax return was signed?

b. Did you examine your tax return and have any discussions about the deduction for the gift of your papers? If so, what was said?

c. Did you have any discussions about the deed at that time with those present? If so, what was said?

d. Did you discuss in any way the 1969 change in the tax laws regarding the gift of papers? Did you discuss the impact of the change on the 1969 gift? On future gifts?

-5-

Congress of the United States
JOINT COMMITTEE ON INTERNAL REVENUE TAXATION
Washington, D.C. 20515

e. Would you discuss generally the conversation about your tax return, the manner in which you reviewed it, and any other factor relevant to your tax return and the deduction for gift of papers during the period prior to, during, and after the signing of your tax return on April 10, 1970?

f. Was the recording device in place in your office on April 10, 1970? If so, was it working during the period you were discussing your tax return? If so, could we have a transcript of the conversation?

II. San Clemente Property

1. Were you involved in the determination of the selling price of the portion of the San Clemente property which was sold to B&C Investment Company? Would you discuss generally your knowledge, intent, and any other relevant factor involving the purchase and sale of that portion of your property in 1970.

2. Did you have any discussions with your staff or your accountants or lawyers on the use of your residence at San Clemente for business purposes? Could you provide us with your understanding as to how the 25 percent business usage on your San Clemente property was determined?

III. Sale of New York Apartment

Were you aware that a deduction was taken on your 1968 tax return and on tax returns of earlier years for the use of part of your New York City cooperative apartment for business purposes?

IV. Key Biscayne Property

What are your present intentions with respect to the future use of your properties at Key Biscayne?

V. Family Use of Government Airplanes

1. We understand that as of April 1, 1971, you instructed your staff to bill you for travel on Government planes by

Congress of the United States

JOINT COMMITTEE ON INTERNAL REVENUE TAXATION

Washington, D.C. 20515

Tricia and Edward Cox and Julie and David Eisenhower when they travel in other than an official capacity. Could you furnish us any information as to the treatment of those trips prior to your instructions and the method that was to be used in billing you for the trips subsequent to your instructions? On what basis is the billing for the subsequent period determined, and if it is different from the method used to bill the Press Corps for the use of Government planes, would you explain the reasons for the difference in the billing methods. How is it determined, and by whom, that your daughters and their husbands are traveling in official capacity?

2. We understand that during the period of April 1, 1972, through November 16, 1972, there were no reimbursements by you to the Treasurer of the United States for family travel on Government aircraft. Could you furnish us with information as to whether the travel during this period was reimbursed and, if so, by whom and why? Was any of the travel during this period for personal purposes and, if so, could you furnish us a list of such trips?

Congress of the United States

JOINT COMMITTEE ON INTERNAL REVENUE TAXATION

Washington, D.C. 20515

MAR 22 1974

Mr. Kenneth W. Gemmill
Dechart, Price & Rhoads
1600 Three Penn Center
Philadelphia, Pennsylvania 19102

Mr. H. Chapman Rose
Reavis, Pogue, Neal & Rose
1100 Connecticut Avenue, N.W.
Washington, D. C. 20036

Dear Messrs. Gemmill and Rose:

As you know, usually when a taxpayer's returns are being examined, there are opportunities for discussions with the taxpayer relative to problems which may arise. The staff realizes that this is a special situation because of the office of the taxpayer but, nevertheless, believes that there are certain problems involving items on the President's tax returns that probably can be clarified only by the taxpayer.

As a result, the staff has prepared a series of questions which it believes would be helpful in understanding certain matters with respect to the President's tax returns. I would be most appreciative if you could obtain from the President for us his responses to these questions and any other information which he or you believe would be appropriate for our consideration during the course of our examination of his tax returns.

Sincerely yours,

(Signed) Laurence N. Woodworth

Laurence N. Woodworth

Enclosure

BMS:jsp 3/21/74

March 22, 1974

MEMORANDUM FOR THE RECORD:

We have attached for your information excerpts from the IR Manual, Section 4563, which discuss various criteria on the basis for assertion of a negligence penalty. These guidelines are used by Revenue Agents and Tax Auditors in the regular course of audit examinations.

We have also attached for convenient reference excerpts from the CCH tax service. These sheets delineate a number of cases along with short excerpts bearing upon the imposition of the negligence penalty. Those cases which we have bracketed with ballpoint pen are those cases which support nonassertion of the penalty; cases highlighted in yellow are cases which support assertion of the penalty.

We have also attached a copy of a memorandum dated August 12, 1969, from John Ehrlichman to Herb Kalmbach which refers to a memorandum dated July 16, 1969, from Roger Barth to Edward L. Morgan. This memorandum contains a series of very pointed and specific questions regarding the tax treatment of many items.

There is also another memorandum attached, dated June 16, 1969, from John Ehrlichman to Ed Morgan, containing specific instructions regarding the use of San Clemente and Key Biscayne, referring specifically to the tax consequences.

13. IRS MEMORANDUM, MARCH 22, 1974, WITH ATTACHMENTS

With regard to the penalty under Section 6653(a), the following items which were developed in the course of this audit require significant analysis and consideration:

Sale of Florida Lots - 1972

In connection with this item, we propose to make a substantial adjustment to the taxpayer's income for 1972 and subsequent years, since it is an installment transaction. The purported partnership did not, in fact, exist. The transaction supposedly was supported by a memorandum between the taxpayer and his daughter; however, we subsequently determined that no such memorandum ever existed.

We have just received a memorandum by the principal stating that no written agreement ever existed.

Royalty Income - 1971

From our examination of the Nixon Foundation, it was determined that an alleged assignment of royalty income by the taxpayer to his Foundation was made. Our investigation revealed that no assignment of title to the manuscript was ever made, and income was assigned as the result of verbal instructions from the taxpayer.

Guest Fund - 1970 - 1972

The taxpayer deducted all expenses incurred while away from his tax home in Washington, D. C. Although substantiation of amounts expended were obtained, taxpayer did not retain any substantiation whatsoever as to the purpose of the expenditure or the names of individuals for whom supposedly official entertainment was conducted.

This was in spite of the memorandum from Roger Barth informing him of the requirements of Section 274 and the necessity of maintaining detailed records.

Use of Airplane - 1970 - 1972

The taxpayer permitted his children, wife, and friends to use government planes. For the period April 1, 1971, through December 31, 1972, reimbursement was made by the taxpayer and/or the Committee to Re-elect the President for the use of these planes by his children only. We have been unable to ascertain why the taxpayer found it necessary to reimburse for this use starting April 1, 1971. The taxpayer did not reimburse for the use of the plane if he also traveled with his children.

Business Expense at San Clemente - 1970 - 1972

The taxpayer deducted 25% of the operating expenses and depreciation of his San Clemente residence. We were given no substantiation whatsoever to support this 25% deduction other than that 25% is better than 50%. The taxpayer's representative did give us a detailed itinerary of the taxpayer's use of the Western White House but was unable to show that the use of the residence would qualify for any deduction.

Taxpayer's representative was requested to furnish us with the basis for the computation of the 25% business use which was deducted on the tax return. As of this date, he has been unable to furnish us

with either a basis for the deduction or a method for computing the deduction. We are, therefore, proposing to disallow the entire 25%.

Careful consideration of the above proposed adjustments and the circumstances giving rise to these adjustments warrants assertion of the Section 6653(a) penalty.

A decision against assertion of this penalty would have to be based on the prior examination and the issuance of the letter of commendation to the principal.

(See Special Note attached)

Barring development of other significant or material information or facts bearing on Section 6653(b), our position at this particular point and time would be the recommendation of the assertion of the 5% penalty.

SPECIAL NOTE

In connection with our conversation with you in your office on Wednesday, March 20th, we feel that there will, in all likelihood, be an immediate tendency to compare the results of the current audit with the result of the May 1973 audit.

The original audit was not an indepth audit. It was completed in a very short period of time and apparently consisted of a verification of amounts rather than purpose. The agents were not aware that the basic substantiation was not available or in some cases non-existent.

The subsequent audit was conducted on an indepth basis and included assignment of specialists as well as income tax agents. Only this type of examination could have brought to light the above mentioned inadequacies which would appear to support assertion of the Section 6653(a) penalty.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

PERSONAL
CONFIDENTIAL

AUGUST 12, 1969

TO: HERB KALMBACH
FROM: JOHN EHRLICHMAN

Some time ago we posed a number of tax questions which have now been briefed by the confidential assistant to the Commissioner of Internal Revenue.

Herewith is a complete copy of this file for your personal and confidential use in connection with the matters to be discussed concerning the President's affairs.

When you are ready to spend some time on this, please call Jana Hruska and we will arrange an appointment. I suggest it be during the week that Ed Morgan is here for the Trustees meeting in order that he can participate.



Attachment

EXHIBIT "6"

CONFIDENTIAL

General Counsel
Internal Revenue Service
Washington, D.C. 20543

July 16, 1969

MEMORANDUM TO: Edward L. Morgan
Deputy Counsel to the President
(for John Ehrlichman)
The White House

FROM: Roger V. Barth *RVB*
Assistant to the Commissioner

Following in brief are the results of my research and my reactions to the points raised in John Ehrlichman's two memos dated June 16, 1969, copies of which are attached, with regard to the President's income tax matters.

1. The President intends to use the San Clemente house for official visits and his den as an office for Presidential activities. A deduction would be permitted for depreciation and maintenance expenses (all property taxes and mortgage interest being deductible in any event) based on a formula considering the amount of time used for business purposes and the square foot percentage of the house used. It would be necessary to devise a system for keeping track of this business use.

2. I have determined that the total amount to be paid to the President in 1969 will be \$236,458.32, including the percentage of the \$50,000 taxable expense allowance. The Federal withholding will total \$74,983.26. The President's withholding statement reflects only two exemptions and there is no extra reduction in the withholding to reflect the fact that he will take the full 30% charitable deduction.

- 2 -

a. A determination of whether the President is being overwithheld must await the resolution (discussed below) of his deductions for business expense;

b. I would assume that his interest expense would be the same as the last few years, i.e., about \$25,000;

c. I would need to have an estimate of his real property taxes for 1969; I understand that a conclusion was reached in New York that the President is exempt from D. C. income tax.7

d. The amount of the charitable 30% deduction can be determined. I am in the process of checking the legislative history on the \$50,000 allowance to determine whether it is included in adjusted gross income with the effect that it will increase the amount of the charitable deduction;

e. I would need an estimate of the President's outside income.

3. a. I personally agree with the idea that much of the President's expense is related to his "business." As with the business use of his residence, a careful system must be established for keeping track of business expenses to meet the substantiation requirements of Internal Revenue Code §274. It is clear from the statute, Title 3, §102, that the President must account for the \$50,000 for income tax purposes. When I examine the legislative history on this section I may have some more specific guidelines to give you.

b. Small gifts by the President which are related to his "business" would be deductible under the same conditions as his entertainment expense with the additional limitation that no more than \$25 per year may be deducted with respect to any one donee. Once again, a system of recordkeeping is necessary if it is not

- 3 -

already established. Note, however, that we must give thought to distinguishing between activities and gifts related to "being a President" and those related to running for reelection.

4. If the President were to permit others to use the Florida and California homes, deductibility of a portion of depreciation and maintenance expense would be tied into the space-time use formula discussed above in paragraph 1. In addition, unlike official visits, we would have to establish the business purpose for the President with regard to each person invited to use the homes.

5. Since the Smathers' house in Florida will be used only for meetings and business, I concur that depreciation and maintenance expense should be deducted.

6. Legally we might justify deduction as a business expense for a salary paid to Julie as a tour guide this summer. However, for the following reasons, I most strongly recommend that this not be done:

- a. the amount involved is rather small;
- b. this is always a factual question which could be raised on audit of whether she is necessary to the taxpayer's "business";
- c. in addition to Federal withholding data which would get into the files at the IRS, information would have to be given to the Massachusetts tax authorities and to the Social Security people. There are too many entities involved for this to be kept confidential;
- d. the newspapers have made much of the fact that she has been acting as a "volunteer." I think the risk of exposure of a business deduction attempt is too great;
- e. Julie cannot be taken as an exemption by the President for 1969 unless three conditions are met:

1. he provides more than half of her support;
2. David does not take her as an exemption;
3. she and David do not file a joint return.

f. The best approach would be for the President to make a gift at the end of the summer to Julie. Although it would not be deductible to him, it would be tax-free to her.

7. I understand that someone at the Vincent Andrews firm is continuing to keep track of a number of the items mentioned above. I think it is most important that a regular accountant be retained either there or in Washington to handle the day-to-day recordkeeping. Once he is picked, I could work closely with him in establishing procedures and in handling problems as they arise.

Attachments

WASHINGTON

JUNE 16, 1969

TO: ED MORGAN
FROM: JOHN EHRLICHMAN

Vincent Andrews has lost Marty Feinstein.

The President has decided that he would like his income tax handled locally.

Do we have the ability to detail someone from IRS to handle his financial matters? If not, do you have a recommendation?

This is something we should move on rather quickly.

Another subject:

The President intends to use the San Clemente house for official visits and he intends to use his den as an office for Presidential activities. What write-offs are available to him?

Will you please have someone carefully check his salary withholding to see if it takes into account the fact that he will be making a full 30% charitable deduction.

He would like you to secure the services of an expert if we don't have anyone in our office competent to make this review, and to have that person come in and review with him his new tax status, going over with him his last returns and his current estimate.

The President holds the view that a public man does very little of a personal nature. Virtually all of his entertainment and activity is related to his "business". He wants to be sure that his business deductions include all allowable items. For instance, wedding gifts to Congressmen's daughters, flowers at funerals, etc. He has in mind that there is some kind of a \$25 limitation on such expenses.

He suggests that we might review the returns of one or more previous Presidents for guidance.

Another subject:

What are the tax consequences of permitting others to use the Florida and California houses?

Another subject:

Note that the Smathers house in Florida will be used only for meetings and business, not for personal residence. Accordingly, the accountant should be instructed to depreciate and write off its expenses as business expenses.

MATERIALS REGARDING THE PRESIDENT'S TAXES
SUBMITTED ON BEHALF OF PRESIDENT NIXON

JUNE 1974

JUN 4 1974

Honorable Warren G. Magnuson
United States Senate
Washington, D.C. 20510

Dear Senator Magnuson:

Thank you for your letter of May 10, 1974, on behalf of Mr. Charles S. Williamson requesting information regarding President Nixon's gift of papers to the United States, recently the subject of review by the Joint Committee on Internal Revenue Taxation and the Internal Revenue Service.

Traditionally, from the administration of George Washington to the present, the papers generated by an elected official within the Federal Government have been regarded as the personal property of that official. With regard to the executive branch, the Congress recognized this tradition by statute when it passed the Presidential Libraries Act of 1955, now codified as sections 2101, 2107 and 2108 of title 44, United States Code.

Under this Act the Administrator of General Services, acting on behalf of the people of the United States, is authorized to accept donations of personal papers and other memorabilia from an incumbent or former President or others associated with his career, most often for the eventual deposit of those papers in a Presidential library bearing his name. There are presently six Presidential libraries, representing Presidents Herbert Hoover through Lyndon Baines Johnson, operated by GSA's National Archives and Records Service. Plans for an eventual Richard M. Nixon Library have been under study since the beginning of his first term in office.

The Joint Committee on Internal Revenue Taxation and the Internal Revenue Service had to consider two factors in reaching a determination as to the allowability of the tax deductions claimed for the Nixon gift of pre-Presidential papers: First, had the President made a valid gift of his papers to the United States; and second, if he had made such a gift, what was its effective date, i.e., had the gift been completed on or before July 25, 1969, the date after which the Tax Reform Act of 1969 dictated income tax deductions for such gifts would no longer be valid. It was on this second point that the Committee staff and the IRS disallowed the President's deduction. Neither determined that there had not been a valid gift, but merely that the gift had not been completed on or before July 25, 1969.

President Nixon's decision to pay the taxes thereby assessed in no way adversely affects the validity of the gift itself. Long before the onset

ALLAN KAUPINEN LETTER, JUNE 4, 1974

of the tax controversy, it was the position of the General Services Administration, which itself has absolutely no involvement in Federal tax matters, that there had been a valid gift of the subject papers to the United States. This position was repeatedly and consistently communicated to the investigators on the Joint Committee staff and the IRS, as well as to the President's representatives. Moreover, we are aware of no disagreement having been expressed by any of these parties.

In addition to the papers that are the subject of President Nixon's gifts to the United States, the National Archives presently has in courtesy storage a vast collection of the President's papers and other memorabilia that have not been donated. Our position with regard to these materials has always been that they remain the President's property and that he is free to retain them and do with them as he sees fit. We naturally hope, however, that they one day are deposited in a Richard M. Nixon Library. It is our view that the Presidential library system is the most effective means yet devised of assuring that the documentary resources of our Presidents and their administrations are preserved for the use of future generations.

Sincerely,

Allan G. Kaupinen
Assistant Administrator

Enclosure

cc: Official file - Office of Pres. Libs. (NL)
The Administrator (A) (2) ✓
Assistant Administrator (AL)
Research Asst. to the Administrator (A)
Day file - Archivist of the U.S. (N)
Reading file (NL)
LR

Control No. 8901

LRR:SGarfinkel:NDA:ACThomas:jwa 5/15/74 13-23512

Concurrences:

James E. O'Brien
Archivist of the United States (N)

MAY 15 1974
Date

Office of Congressional Affairs (ALC)

Date

COMMONWEALTH OF PENNSYLVANIA :

ss

COUNTY OF PHILADELPHIA :

AFFIDAVIT

Kenneth W. Gemmill and H. Chapman Rose, being first duly sworn, depose and say:

1. That in July, 1973, the President instructed them as his personal counsel to develop a program for verifying and publicizing the transactions, and the source of the funds used, in his acquisition of his residences at Key Biscayne and San Clemente; that pursuant to this instruction, affiants retained the accounting firm of Coopers and Lybrand, which performed a detailed audit, in accordance with accepted accounting practice, of the financial affairs of President and Mrs. Nixon and, based thereon, furnished a report dated August 20, 1973, detailing these acquisitions and the funds used, which report was made public on August 27, 1973; that, beginning in the summer of 1973, questions had been publicly raised concerning the correctness of the federal income tax returns filed by the President and Mrs. Nixon, with respect to the deduction in 1969 of the appraised value of a gift of Pre-presidential papers to the United States and with respect to the tax treatment of the sale in 1970 of a portion of his San Clemente property;

2. That on or about December 1, 1973, the President communicated to the affiants his decision to make public the report of the Coopers and Lybrand audit; that on December 3, 1973, affiants consulted with the President as to the best procedure to follow with respect to the above-described tax questions, the

alternatives being (a) to await events, (b) to request the Commissioner of Internal Revenue to assess a deficiency, looking toward an ultimate judicial determination, or (c) to submit these tax questions for determination by the Joint Congressional Committee on Internal Revenue; that, at the President's suggestion, affiants met on the afternoon of December 3, 1973, with the Republican leadership of the Senate and the House, including Vice-President Ford, Senators Scott of Pennsylvania, Griffin, Cotton and Tower and Representatives Arends, Rhodes and Anderson, to review the audit report and the contents of the tax returns of the President and Mrs. Nixon for the years 1969-1972, and to obtain their advice on the foregoing alternatives; that the consensus of this meeting, with which affiants concurred, was to submit the tax questions to the Joint Congressional Committee in order to obtain a prompt decision in circumstances which would rebut any suggestion that the President could control or influence the result; that the President, for this reason, immediately accepted this advice and by his letter (Exhibit A attached) dated December 8, 1973, to Representative Wilbur Mills, then Chairman of the Joint Congressional Committee, transmitted this request to the Committee; that on December 7 and 8, 1973, affiant Gemmill conducted several briefing sessions on the Coopers and Lybrand audit report and the tax returns for members of Congress and the press; and that a letter from the Director of the Baltimore District of the Internal Revenue Service to the President and Mrs. Nixon, dated December 7, 1973, announcing an intention to reaudit their tax returns for the years 1971 and 1972, did not come to the attention of the affiants, nor, as far as they are aware, to the attention of the President, until after the announcement, during these briefings, of the President's request to the Committee; and that the President received from Chairman Mills a letter dated December 13, 1973, expressing

the willingness of the Joint Congressional Committee to undertake an examination of all questions relating to the tax returns of President and Mrs. Nixon for the years 1969-1972.

3. That on December 19, 1973, affiants met with the Commissioner of Internal Revenue, the Chief of Staff of the Joint Congressional Committee on Internal Revenue, and a number of their representatives and agreed initially on cooperating in a program of developing the facts relating to the tax questions above described, and any others raised by the President's returns; that affiants met on many subsequent occasions with representatives of the Commissioner and with the staff of the Committee, provided material requested by them, and with the three minor exceptions noted at p.3 of the published report of the Committee staff, complied with all their very wide-ranging requests for information; that the published report of the Committee staff expresses, with only the minor reservations noted above, its satisfaction with the cooperation received from affiants and other representatives of the President (see pp. 2-3 of that report); that, however, shortly after the beginning of the cooperative investigation, the Chief of Staff expressed the preference of his Staff for separate rather than joint examination of witnesses, with the understanding that the affiants were to be furnished promptly memoranda containing the substance of such interviews; that such memoranda of Committee interviews, although frequently promised, were not furnished to affiants, except for the delivery to the affiants on Saturday, March 30, 1974, of more than a hundred pages of a partial draft, marked "Not final -- Subject to revision" of the Committee Staff's report four days before its publication on Wednesday, April 3, 1974; and that affiants remain convinced that, as a result of this method

of developing oral testimony almost exclusively ex parte, the President's case was not brought before the Staff or the Internal Revenue Service as strongly or as adequately as would have been possible had each side developed its direct testimony in the presence of the other, subject to cross-examination.

4. That, in the opinion of affiants, the foregoing procedure is in substantial part responsible for the two differing views (the one expressed in our tentative memorandum dated February 19, 1974, delivered to the Committee staff and printed at pages A-13 et seq. of the Staff report,*and the other expressed in the report published by the Committee staff on April 3, 1974) of the facts relating to the question whether the actions taken with regard to the Nixon Pre-Presidential papers in 1969 prior to the statutory cut-off date of July 25, 1969, were sufficient to constitute a deductible gift; that affiants remain of the view stated in their April 1, 1974 memorandum that the facts support deductions taken for the fair market value of the 1969 gift under applicable legal principles; and that there is a substantial likelihood that in litigation conducted in the traditional manner, with evidence presented by each side in the presence of the other, and subject to cross-examination by the other and with full opportunity for briefs and argument, a court would so hold.

5. That there were two additional questions which, taken together with the disallowance of the deductions for the gift of the Nixon Pre-Presidential papers, account for a high

* A revision of this memorandum dated April 1, 1974, the intended presentation of which to the Committee never took place by reason of the publication on April 3, 1974, of the Staff's conclusions, is hereto attached as Exhibit B.

percentage of the total deficiency found: (a) the disallowance of the deferral of the capital gain on the sale of the President's New York apartment in 1969, based on his purchase within a year of the property at San Clemente as his intended principal residence, and (b) the assessment of a capital gain tax on the sale in 1970 of a portion of the San Clemente acreage;

That, as to (a), for the reasons stated in their memorandum dated February 19, 1974, furnished to the Committee staff and attached hereto as Exhibit C, the affiants remain of the view that there is a substantial likelihood that a court would hold that the capital gain was deferrable;

That as to (b), the Staff Report agrees that the question whether there was a capital gain from the sale of a part of the property depends upon an allocation of the total cost of the whole property between what is sold and what is retained, based on the relative fair market values of the properties sold and retained (p. 99), and that fair market value is a factual issue (p. 101); that several independent appraisers stated widely varying views as to valuation, again without direct or cross-examination in the presence of the parties; that the latest of these opinions (those of Hugh Drumm dated March 22, 1974 and April 4, 1974, attached hereto as Exhibits D and E, the first of which was furnished to the Staff of the Committee but not included in the printed report) are the most favorable to the view that no capital gain was realized; and that affiants remain of the view that there is a substantial likelihood that a court would hold that no capital gain was realized.

Further, affiants sayeth not.

Kenneth W. Gemmill

H. Chapman Rose

H. Chapman Rose

Subscribed and sworn to before me this *26th* day of

June, 1974.

Antoinette Gordon

Notary Public

ANTOINETTE GORDON

Notary Public, Philadelphia, Philadelphia Co.

My Commission Expires June 10, 1978

December 8, 1973

Dear Mr. Chairman: *Wilbur B. Mills*

Recently there have been many questions in the press about my personal finances during my tenure as President.

In order to answer these questions and to dispel public doubts, I am today making public a full accounting of my financial transactions since I assumed this office. This accounting includes copies of the income tax returns that Mrs. Nixon and I have filed for the years 1969-72; a full, certified audit of our finances; a full, certified report on the real and personal property we own; an analysis of our financial transactions, including taxes, from January 1, 1969 through May 31, 1973, and other pertinent documents.

While these disclosures are the most exhaustive ever made by an American President, to the best of my knowledge, I recognize that two tax-related items may continue to be a subject of continuing public questioning. Both items are highly complex and, in the present environment, cannot easily be resolved to the public's satisfaction even with full disclosure of information.

The first transaction is the gift of certain pre-Presidential papers and other memorabilia which my wife and I claimed as a tax deduction of \$576,000 on our 1969 return and have carried forward, in part, in each subsequent year. The second item in question is the transfer by us, through the Title Insurance and Trust Co., to the

RECEIVED

DEC 26 1973

FEDERAL BUREAU OF INVESTIGATION

B&C Investment Co. of the beneficial interest in 23 acres of land in San Clemente, California in 1970. I have been consistently advised by counsel that this transaction was correctly reported to the Internal Revenue Service. The IRS has also reviewed these items and has advised me that they were correctly reported.

In order to resolve these issues to the full satisfaction of the American people, I hereby request the Joint Committee on Internal Revenue Taxation to examine both of these transactions and to inform me whether, in its judgment, the items have been correctly reported to the Internal Revenue Service. In the event that the committee determines that the items were incorrectly reported, I will pay whatever tax may be due. I also want to assure you that the committee will have full access to all relevant documents pertaining to these matters and will have the full cooperation of my office.

I recognize that this request may pose an unusual challenge for the committee, but I believe your assistance on this matter would be a significant public service.

With warmest regards,

Sincerely,

RICHARD NIXON

The Honorable Wilbur D. Mills
Chairman
Joint Committee on Internal
Revenue Taxation
House of Representatives
Washington, D.C. 20515

BEFORE THE
JOINT COMMITTEE ON INTERNAL REVENUE TAXATION
Washington, D. C.

MEMORANDUM ON THE BASES SUSTAINING
CHARITABLE CONTRIBUTION DEDUCTIONS TAKEN
IN CONNECTION WITH PRESIDENT NIXON'S
1969 GIFT OF HIS PRE-PRESIDENTIAL PAPERS

Kenneth W. Gemmill
H. Chapman Rose

Attorneys for President
Richard M. Nixon

Dated: February 19, 1974

Revised: April 1, 1974

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APPENDIX A. -- Letter from Harold S. Trimmer, Jr., Acting General Counsel, GSA, to H. Chapman Rose, March 7, 1974.

APPENDIX B. -- In re Roosevelt's Will, 73 N.Y.S.2d 821 (Sur. Ct. 1947).

APPENDIX C. -- The History of Presidential Papers.

MEMORANDUM ON THE BASES SUSTAINING
CHARITABLE CONTRIBUTION DEDUCTIONS TAKEN
IN CONNECTION WITH PRESIDENT NIXON'S
1969 GIFT OF HIS PRE-PRESIDENTIAL PAPERS

I

INTRODUCTION

In early 1969, President Nixon directed his staff and attorneys to take immediate steps to donate to the United States that portion of his pre-Presidential papers which he could expect to deduct from taxable income in that year and the full (five-year) statutory carry-over period. Action was taken to implement this order, and the President's 1969 tax return reflected a gift of papers appraised as having a fair market value of \$576,000.00. Of this amount, \$95,298.45 was treated as a deduction from 1969 income and the remainder was carried over.

Questions were raised recently concerning the propriety of President Nixon's charitable contribution deductions in light of amendments to the Internal Revenue Code that were signed into law on December 30, 1969, and made retroactive to July 25, 1969. Because of the public concern over these questions, the President, asked this Committee on December 8, 1973 to decide whether he should have treated the gift differently for tax purposes.

Since December 8, 1973, the undersigned, as the President's personal counsel, have worked with the staff of the Joint Committee and with representatives of the Internal Revenue Service to ascertain

-2-

the facts to which the relevant principles of law can be applied. Following the desires of the Chief of Staff of the Joint Committee, separate interviews have been had with those who played a part in dealing with the President's papers and in preparing his tax returns for the period 1969-1972. It has not yet been possible to coordinate the results of these separate interviews into an agreed statement of facts. However, it is not too early to say (1) that certain facts have emerged as virtually undisputed; and (2) that conflicts have arisen with respect to other facts which tend to change the understanding of the situation held by us on December 8, 1973.

Despite the recently discovered factual conflicts, we believe that the undisputed facts support deductions taken for the fair market value of the 1969 gift under applicable legal principles. In the interest of presenting to the Joint Committee and the Internal Revenue Service in timely fashion the legal principles involved, we have prepared this memorandum which segregates the undisputed facts from those that appear uncertain and which sets forth our view of the law.

II

BACKGROUND OF PRESIDENT NIXON'S GIFTS OF PRE-PRESIDENTIAL PAPERS

A. Undisputed Facts

1. The 1968 Gift Of Pre-Presidential Papers

Shortly after the 1968 election, Mr. John D. Ehrlichman began performing for President-Elect Nixon the functions which he formally assumed in January on his appointment as Counsel

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to the President. He was assisted by two attorneys, Messrs. Edward L. Morgan and Egil Krogh, Jr., who in January were appointed Deputy Counsel, and by a non-lawyer, staff member Mr. Charles E. Stuart.

Among the initial assignments that Mr. Ehrlichman gave Messrs. Morgan and Krogh was the job of handling certain aspects of the President-Elect's personal affairs, including a gift to the United States in 1968 of a portion of his pre-Presidential papers. In this connection, he directed them to work with Mr. Nixon's New York attorneys, Messrs. Richard S. Ritzel and James P. Tannian of Mudge Rose Guthrie & Alexander.

The President-Elect's pre-Presidential papers were stored in large volume at a Mudge Rose warehouse in New York, and his desire was to donate a portion of these having a value slightly in excess of the maximum charitable deduction which he could take on his 1968 tax return. To carry out this intent, the President-Elect's representatives, including Messrs. Morgan, Krogh, Ritzel and Tannian, determined that his maximum charitable contribution deduction in 1968 would be approximately \$60,000. They obtained the services of Chicago appraiser Ralph G. Newman (who had performed the same function for President Johnson) to assist them in selecting a portion of the papers which had this approximate value. The selection was made in late December, and to effect the gift before the end of the tax year, Messrs. Ritzel and Tannian prepared a formal instrument of conveyance

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for the signatures of the President-Elect and a representative of the General Services Administration.^{1/} Execution of the instrument, which was written in the form of a chattel deed, was completed on December 30, 1968, by countersignature of a representative of GSA.

Early in 1969, Messrs. Morgan and/or Krogh arranged to transport all of the pre-Presidential papers from New York to Washington. The papers selected for donation in 1968 were shipped directly to the National Archives and the remainder, comprising approximately 1,217 cubic feet, were shipped to Federal Office Building #7 (the New Executive Office Building) for temporary storage pending further instruction from President-Elect Nixon.

2. The President's Instructions With
Respect To A Gift Of Papers In 1969

Mr. Ehrlichman moved his offices to Washington following President Nixon's inauguration and redefined his staff's responsibilities so that Mr. Morgan had the principal responsibility under his direction for discharging the staff's obligations

^{1/} Messrs. Ritzel and Tannian drafted two alternative forms of deeds: one contained no restrictions on access to the donated papers and the other contained certain restrictions on access for the period that President Nixon remained in office. Both forms of deeds were cleared with the IRS and GSA, and Mr. Ritzel discussed them with Mr. Nixon on December 28, 1968, prior to the selection and appraisal of the papers by Mr. Newman. On the assumption that some sensitive papers would be included in the group selected for the 1968 gift, President-Elect Nixon directed Mr. Ritzel to use the deed containing restrictions.

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with respect to the President's personal affairs. Both Messrs. Ehrlichman and Morgan were occupied in early February with advance work for the President's European trip, but near the end of the month the President had further discussions with Mr. Ehrlichman concerning the donation of his pre-Presidential papers. President Nixon expressed his intention during these discussions to give in 1969 as great a volume of the papers as he could treat as a deduction in that year and the statutory carry-over period and to give any remaining papers later^{1a/}. Mr. Ehrlichman conveyed this intention to Mr. Morgan early in March and gave him staff responsibility for implementing it immediately.

Apparently some members of the Joint Committee staff have questioned whether Mr. Ehrlichman's testimony concerning the President's donative intent and Mr. Ehrlichman's instructions to Mr. Morgan coincided in all respects with the above statement. To remove any uncertainty, we submitted the statement to Mr. Ehrlichman through his attorney, Mr. John J. Wilson. We are informed by Mr. Wilson that Mr. Ehrlichman personally examined

1a/ As indicated in our April 1, 1974 letter to the Chief of Staff of the Joint Committee, President Nixon has specifically confirmed to us that the tax statement accurately reflects his directive to Mr. Ehrlichman.

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the statement and confirmed that it conforms completely (1) with his recollection of his February 1969 conversation with President Nixon, and (2) with what he sought to convey in his testimony before the Joint Committee staff.

In addition to Mr. Ehrlichman's testimony, there is documentary confirmation of the President's intent to utilize fully his charitable contribution deduction for 1969 in the Vincent Andrews worksheets for 1969 and Mr. Ehrlichman's memorandum to Mr. Morgan of June 16, 1969. These documents have been supplied to the Joint Committee staff.

To our knowledge, there is no evidence before the Committee which is in any way inconsistent with Mr. Ehrlichman's statements to us concerning the President's expression of donative intent.

3. Delivery Of The 1969 Gift Papers

Acting on Mr. Ehrlichman's instructions, Mr. Morgan proceeded to coordinate the delivery of the papers to the National Archives. In mid-March, Morgan and Charles E. Stuart had conversations and correspondence on the matter of delivery with Assistant Archivist for Presidential Papers Daniel J. Reed, who immediately organized a team headed by Archives consultant Sherrod E. East to receive, arrange and catalogue the papers.

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On March 26 and 27, 1969, all of the pre-Presidential papers stored in Federal Office Building #7 were delivered to the National Archives at Mr. Morgan's direction. The General Services Administration, which operates the Archives, viewed the delivery as having been made for "gift purposes" but was unclear on what portion was to become the property of the United States immediately. ^{1b/} Nonetheless, Mr. East and his staff proceeded immediately to work toward their objective of achieving "intellectual and physical control" over all of the papers. By May 27, 1969, they had completed the initial tasks of boxing, labeling and filling out inventory worksheets. ^{2/}

Since the General Services Administration received no instructions concerning the conditions of access applicable to the papers delivered in March, it assumed that it was to apply the same conditions which had been specified in the 1968 deed. ^{3/}

^{1b/} Responses of the General Services Administration to written questions submitted by the Internal Revenue Service, December 16, 1973. The GSA responses were prepared in collaboration with and specifically confirmed by the senior officials of the National Archives who held their positions at the time the 1969 gift papers were delivered. See, Letter from Harold S. Trimmer, Jr., Acting General Counsel, GSA, to H. Chapman Rose, March 7, 1974. (See Appendix A.) Cf., Letter from A. F. Sampson, Administrator of GSA to Senator Lowell P. Weicker, December 7, 1973.

^{2/} Memorandum from National Archives Consultant Sherrod E. East to Dr. Daniel J. Reed, Assistant Archivist for Presidential Libraries, May 27, 1969.

^{3/} Supra, note 1.

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4. Morgan-DeMarco-Newman Contacts
Concerning The 1969 Gift

At about the same time as the delivery of the 1969 gift papers to the Archives, Mr. Ehrlichman advised Mr. Herbert W. Kalmbach of the Los Angeles law firm of Kalmbach, DeMarco, Knapp & Chillingworth that as a result of the President's decision to acquire property at San Clemente, he desired to shift major outside counsel responsibility for his personal affairs from his former New York firm to them. Mr. Kalmbach so advised his partner, Mr. Frank DeMarco, Jr., and indicated that Messrs. DeMarco and Morgan were to work together in implementing the President's expressed intent with respect to the 1969 gift of papers.

At the end of March or the beginning of April, a telephone conversation ensued between Messrs. DeMarco and Morgan which in turn led, according to Mr. DeMarco, to a call from DeMarco to Mr. Newman in the first week of April. ^{3a/} Mr. DeMarco's

3a/ Since our submission of the January 19, 1974 draft of this memorandum, members of the Joint Committee staff have questioned whether the initial contact between Messrs. DeMarco and Newman occurred in early April or late October 1969. To assure ourselves on this and other points we submitted the statement of facts contained in the January 19 memorandum to Mr. DeMarco through his attorney, Mr. Charles A. McNelis. Mr. McNelis reviewed the statement with Mr. DeMarco, and the latter expressly confirmed the early April date and all other representations in the statment concerning his role with respect to the 1969 gift. We are informed, however, by Mr. Newman's attorney, Mr. Herbert J. Miller, Jr., that Newman is no longer certain, as he was in the past, that the initial contact occurred in early April. His

contemporaneous notes of this initial conversation with Mr. Newman indicate that they understood that Newman would go to the National Archives "segregate enough [papers] to satisfy this requirement," and appraise them. Both Mr. DeMarco and Mr. Newman relate that they understood "this requirement" to be a quantity of papers of an estimated value of \$500,000. The \$500,000 figure had been developed by Presidential representatives under the formula for the 1969 gift which President Nixon had conveyed to Mr. Ehrlichman.

5. The 1969 Tax Reform Act

The actions and events described above all took place at a time when the Internal Revenue Code permitted taxpayers to take charitable contribution deductions equal to the fair market value of donated property. Shortly thereafter, however, the Treasury Department proposed a tax reform package approved by President Nixon which recommended, inter alia, that the deduction

3a/ contd.

uncertainty on this matter is surprising in light of two documents which he prepared in 1969. The first was an initial rough appraisal of the 1969 gift papers which he prepared in early November and entitled "Estimate-April 1969." The second was his affidavit of April 6, 1970, in which he stated that he initially examined the 1969 gift papers on April 8, 1969. In addition to these contemporaneous documents which point unmistakably to an April contact, Mr. Newman affirmed in writing within the past year, both to the Internal Revenue Service and the undersigned counsel for the President, that he was initially contacted by Mr. DeMarco in April 1969. He also made oral statements to this effect to the Joint Committee staff, the IRS, and the press.

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permitted for contributions of property which, if sold, would produce ordinary income should be reduced by the amount of the ordinary income that would have been recognized upon a sale of the property. This proposal would not have had any effect on the tax treatment of a gift or sale of papers, which were then clearly within the definition of capital assets.

Chairman Wilbur Mills announced on July 25, 1969, that the House Ways and Means Committee had tentatively decided to include in the tax bill to be reported provisions (1) under which a donor of ordinary income property would have to elect either to limit his deduction to his cost basis or, if a deduction equal to fair market value were taken, to recognize income equal to the gain that would have been recognized had the property been sold, and (2) under which papers were redefined as ordinary income property. This proposal was broad enough to cover many of the private papers of public officials. The Ways and Means Committee reported the bill (H.R. 13270) on August 2, 1969, and the House approved it on August 7, 1969 with the provision that it would apply to contributions made after December 31, 1969, and sales made after July 25, 1969.

The Senate Finance Committee reported the tax reform bill on November 21, 1969, adopting in pertinent part the House's substantive amendments on sales and charitable contributions but pushing their effective date up to December 31, 1968. The Senate passed the bill in this form on December 11, 1969. A compromise

was ultimately reached in conference fixing the effective date of these amendments at July 25, 1969, and the President signed the bill into law on December 30, 1969.

B. Areas In Which There Appear
To Be Factual Conflicts

Two aspects of our factual understanding of the 1969 gift at the time President Nixon asked this Committee to review the issue have been substantially affected by recent conflicting revelations. These are (1) the circumstances surrounding Mr. Newman's segregation of the 1969 gift papers and (2) the activities of Messrs. Morgan and DeMarco in documenting the 1969 gift for tax purposes.

1. Mr. Newman's Segregation
Of The 1969 Gift Papers

Our pre-December 8 understanding of Mr. Newman's activities with respect to the 1969 gift papers was based upon our conversation with him on August 2, 1973, his written statement of that date, his April 8, 1970 affidavit which was submitted with President Nixon's 1969 tax return, and reports of his conversations in 1969 with Mr. DeMarco. From these sources, it appeared that Mr. Newman had visited the Archives between April 6-8, 1969 and, in the company of Archives representatives, had preliminarily segregated a sufficient volume of materials to satisfy the President's criterion for the 1969 gift. According to Mr. DeMarco,

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Mr. Newman telephoned him a short time later to confirm these actions. On the basis of Newman's report, Mr. DeMarco apparently felt that a gift consisting of specifically identified papers had been completed, and he so indicated to Mr. Arthur Blech in May 1969^{3b/} and in a formal legal opinion to Coopers & Lybrand on August 22, 1973.

It now appears that Mr. Newman flew to Washington on April 6, 1969 and visited the Archives only on the 8th. He spent most of the day completing his appraisal of the 1968 gift, and whether or not he visited the room containing the 1969 gift papers, he did not actually segregate them until November 1969.

2. Documentation Of The 1969 Gift

Shortly after the delivery of the 1969 papers to the National Archives, Mr. Morgan transmitted a copy of the 1968 chattel deed to Mr. DeMarco. It appears that Mr. DeMarco did not communicate with Messrs. Ritzel or Tannian concerning the mechanics of the 1968 gift but decided on his own initiative to draft a document incorporating portions of the 1968 deed for the purpose of documenting the 1969 gift and imposing the same conditions of access which applied to the earlier contribution. His deed differed in essential part from the Ritzel-Tannian

^{3b/} Mr. Blech confirmed in testimony before the Joint Committee staff on March 13, 1974, that Mr. DeMarco told him prior to May 15, 1969 that the 1969 gift of papers had already been made and could not be altered at that time.

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instrument in that it was not set up as a bilateral agreement but rather was simply a declaration of the gift.

Mr. DeMarco discussed his version of the chattel deed with Mr. Morgan in mid-April 1969 and apparently got the impression that Morgan would bring receipts describing the donated papers when he visited California at the end of the month. However, Mr. Morgan did not have any documentation when he met with Mr. DeMarco at the latter's Newport Beach office on April 21, 1969, and DeMarco consequently prepared a "schedule" which read as follows:

Private pre-Presidential papers of Richard M. Nixon of approximate value of \$500,000, delivered to the National Archives on March 27, 1969. Detailed Schedule to be attached hereto upon final sorting, classification and appraisal.

The undersigned personal counsel for the President have never attached great significance to the deed and schedule prepared by Mr. DeMarco. Our view has been that it was important only as additional evidence corroborating the President's expressed intent to make a gift of papers in 1969. Therefore, the controversial handling of the deed by Messrs. DeMarco and Morgan is not, in our view, an important factor in assessing the validity of the 1969 gift.

The facts concerning the execution of the deed, as related to us, are as follows: In the course of his meeting with Mr. DeMarco on April 21, 1969, Mr. Morgan gained the

impression that the purpose of the deed and preliminary schedule was to "memorialize" a gift of papers which had already been made. Acting on this understanding, he is 98 percent sure (and Mr. DeMarco is virtually certain) that he signed the deed at that time as "Deputy Counsel to the President."^{3c/} Since Mr. DeMarco did not regard the deed as essential to the completion of the gift, he held it in his office awaiting receipt of a final appraisal and detailed description of the 1969 gift papers from Mr. Newman.

In April 1970, upon receiving Mr. Newman's final appraisal of the 1969 gift papers, Mr. DeMarco assembled the President's tax return, hand carried it to him in Washington, reviewed it with him, and personally witnessed the President's and Mrs. Nixon's signatures.

During the same trip to Washington, Mr. DeMarco met with Mr. Morgan to finalize the 1969 chattel deed. Having just received Mr. Newman's final description of the gift papers, DeMarco substituted a new schedule for the one which he had

3c/ In addition to the testimony of Messrs. Morgan and DeMarco, Mr. DeMarco's former secretary, Mrs. LaRonna Kueny, stated in a sworn deposition before the California Secretary of State on January 24, 1974, that she specifically remembers typing the deed prior to Mr. Morgan's visit to California in April. Mrs. Kueny also stated that the original Schedule A to the 1969 deed was typed on one of the firm's typewriters in Newport Beach, apparently by Mr. DeMarco. A copy of Mrs. Kueny's deposition has been submitted to the Joint Committee staff.

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prepared on April 21, 1969, and had the original deed of that date and the new schedule retyped for aesthetic purposes on a typewriter which his office had acquired in the summer of 1969. Mr. Morgan executed the retyped deed, which was substantially identical in all respects (except the schedule)

to that which he had signed a year before, and dated it back to April 21, 1969. Mr. DeMarco's official attestation also reflected the original date of execution. The re-executed deed and final schedule were subsequently forwarded to the General Counsel of the General Services Administration to formally reflect the conditions of access applicable to the 1969 gift papers.

III

SUMMARY OF BASES SUSTAINING THE CHARITABLE
CONTRIBUTION DEDUCTIONS TAKEN IN CONNECTION
WITH PRESIDENT NIXON'S 1969 GIFT

In preparing the President's tax returns for 1969 and succeeding years, Mr. DeMarco apparently proceeded on the understanding and rationale that a gift of segregated and identified papers was completed prior to July 25, 1969. Although it now appears that there was no segregation of the gift papers until after this date, we believe the deductions are still supported by the undisputed facts. These facts reflect that from the donor's standpoint the 1969 gift consisted of an interest of specified value in a group of delivered papers. The gift in this form was completed well before the statutory cut-off date, and its validity is confirmed by numerous judicial decisions and interpretations of the Internal Revenue Service.

Under the applicable law, which will be detailed in the discussion section below, a gift occurs when there is a present, irrevocable transfer of his property by one to another

without consideration or compensation. Courts generally hold that this standard is met when there has been a clear expression of donative intent coupled with corroborative evidence in the form of actual or constructive delivery of the property in question. Some courts additionally require acceptance by the donee, but most of these are willing to imply its existence where there is no evidence of repudiation. The key to understanding these criteria is to recognize that they are not inflexible and that each case turns on its own particular facts and circumstances. What constitutes a valid gift in some circumstances may not in others.

The facts before this Committee indicate that the President told Mr. Ehrlichman that he wished to donate in 1969 as great a volume of his pre-Presidential papers as he could treat as a deduction in that year and the statutory carry-over period and to give any remaining papers later. Mr. Ehrlichman passed these instructions on, and other Presidential representatives caused the papers to be delivered to the National Archives; they also computed a dollar figure for the gift based on the President's formula, made arrangements for this volume of papers to be segregated, and took steps to prepare backup documentation on the transaction. When the General Services Administration received the papers, it sought immediately to achieve intellectual and physical control over them on the understanding that they were delivered for gift purposes. GSA also took the

initiative of enforcing conditions of access which the President had imposed on his 1968 gift.

All of these actions were taken before July 25, 1969, and in our view they constitute sufficient evidence of the requisite donative intent, delivery and acceptance to support the gift. In particular, there can be no question that the President intended to donate in 1969 an interest in his pre-Presidential papers which was monetarily quantifiable on the formula he provided. This intent was corroborated by delivery, and while some ambiguity may have existed temporarily because the 1969 gift papers were not separated from a larger mass, the uncertainty can easily be dispelled by examining the President's expression of intent in light of the surrounding circumstances. The General Services Administration's actions on receiving the papers bespoke acceptance, not repudiation, and the law is clear that the effectiveness of this acceptance was not affected by the absence of more specific communication between donor and donee.

Observers questioning the validity of the President's 1969 gift in recent months have focused largely on the imposition of what are alleged to be restrictions on public access to the papers. Whether these are properly considered restrictions and whatever their effect, if any, in other circumstances, they have no effect on the validity of the gift here. Congress has stated that the papers of U. S. Presidents are "the most valuable of all source materials of history," and in legislation known as the Presidential Libraries Act, it has explicitly

recognized and sanctioned the legitimate desires of Presidential donors to limit access to to their papers.

Not surprisingly, challenges against the effectiveness of Presidential gifts to the United States are not a common phenomenon. The only known precedent for the current situation is a challenge brought by President Franklin D. Roosevelt's heirs against the effectiveness inter vivos of his gift of papers. There, in a decision which will be examined in detail below, a New York Surrogate's court held that the President's undelivered gift was effective despite the existence of far greater ambiguity than is present here.^{4/} In light of the Roosevelt decision, there can be no question that President Nixon's 1969 gift, viewed as an interest of specified value in delivered papers, was effective prior to July 25, 1969. Accordingly, the charitable contribution deductions taken in connection with the gift were legal and appropriate.

IV

DISCUSSION

A. Title To The 1969 Gift Papers

A threshold question which has been raised in connection with this matter is whether the President ever owned the papers generated during his public career. If the papers were public property as some observers have contended, there would be no

^{4/} In re Roosevelt's Will, 73 N.Y.S.2d 821 (Sur. Ct. 1947).
A copy of the Roosevelt decision is attached as Appendix B.

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need to discuss whether the 1969 transaction satisfied the requirements of a gift. This was not the case, however.

Appendix C to this memorandum demonstrates that the papers of every U.S. President from the time of George Washington have been treated as their personal property. Since 1950, when Congress enacted the Federal Records Act,^{5/} the unbroken historical custom of regarding Presidential papers as private property has been a matter of statutory law. Now known as the Presidential Libraries Act,^{6/} the pertinent law specifically treats the papers of Presidents as their personal property and encourages their donation to the United States. Former House Speaker John W. McCormack, who chaired the House Committee that reported the Presidential Libraries bill in 1955, recited the underlying legal rationale in a statement prepared for the Committee hearings. The following excerpt is noteworthy:^{7/}

The Office of the Presidency, like the offices of the Members of Congress and the Supreme Court, is a constitutional office having separate and independent status in our governmental system. Every President since George Washington has considered that this separate and independent status of the office extends to and embraces the papers of the incumbent of the office. Thus, as is the case with the papers of individual Members of Congress, the

5/ 64 Stat. 583.

6/ 44 U.S.C. §2101 et seq.

7/ Hearings on H.J. Res. 330, 331 and 332 Before a Special Subcomm. of the Comm. on Government Operations, 84th Cong., 1st Sess. at 58 (1955) (emphasis added).

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papers of the Presidents have always been considered to be their personal property, both during their incumbency and afterward. This has the sanction of law and custom and has never been authoritatively challenged. 8/

Since there is explicit Congressional recognition of the concept of private ownership in the papers of Presidents, a statutory change would be required to give effect to arguments that the papers should be treated as public property. Such an amendment would not affect the 1969 gift.

B. The Law Applicable To The 1969 Gift

Three bodies of law bear upon the question of whether President Nixon made a valid gift of papers prior to the July 25, 1969 effective date of the Tax Reform Act. The first is the Internal Revenue Code and applicable IRS regulations under which the President's charitable contribution deductions were taken; the second is the Presidential Libraries Act which makes specific provision for the donation of Presidential papers; and the third is a body of judicial decisions comprising the common law of gifts which is implicitly incorporated in the Internal Revenue Code. Each of the three sources of law will be examined below.

8/ The legal principle recited by Speaker McCormack has broad recognition. See e.g., Taft, "Our Chief Magistrate and His Powers," a 1915 lecture reprinted as The President and His Powers (1967); O'Neill, "Will Success Spoil the Presidential Libraries?" 36 Amer. Arch. 339 (1973); Nevins, "The President's Papers -- Public or Private?" N.Y. Times Mag., Oct. 19, 1947 at 11.

1. The Internal Revenue Code

Prior to the 1969 Tax Reform Act, a public official who donated his personal and work-related papers to the National Archives was entitled under the Internal Revenue Code to a charitable contribution deduction equal to the fair market value of the papers at the time the gift was made. In practice, the size of the deduction was the amount which would have been derived from the sale of papers, as estimated by an expert in the field of document valuation.

In 1969, as now, the only statutory description of a charitable contribution was contained in Section 170 of the Code. Section 170(a)(1) provided in relevant part that "there shall be allowed as a deduction any charitable contribution (as defined in subsection (c)) payment of which is made within the taxable year." Section 170(c) stated that "for purposes of this section, the term 'charitable contribution' means a contribution or gift to or for the use of [certain enumerated entities, including the United States]." The IRS regulations did little to fill in this sketchy outline, stating only that "ordinarily a contribution is made at the time delivery is effected."^{9/}

Lacking a precise statutory or administrative definition of a charitable contribution, courts sitting in tax cases have

^{9/} Reg. §1.170-1(b).

universally applied common law gift standards in determining whether a taxpayer was entitled to a deduction.^{10/} Thus, the basic rules for determining the validity of charitable contribution deductions taken on behalf of President Nixon must be gleaned from the common law. However, where there is a conflict between the Internal Revenue Code, as it incorporates common law, and clearly defined national policy, the latter takes precedence. The application of this principle was illustrated in Green v. Connally,^{11/} where a U. S. district court held that segregated private schools could not be granted tax exempt status under Section 501(c)(3) and that contributors to such schools could not take deductions under Section 170. The Court pointed to the Civil Rights Act of 1964 and a line of cases originating with Brown v. Board of Education^{12/} as evidence of the national policy against segregated educational facilities, and it concluded:^{13/}

The Internal Revenue Code
provisions on charitable
exemptions and deductions
must be construed to avoid
frustrations of Federal

^{10/} See e.g., Henry W. Dodge, Jr. 27 T.C. Mem. 1170 (1968); A.W. Mellon, 36 B.T.A. 977 (1938); Nehring v. Commissioner, 131 F.2d 790 (7th Cir. 1943); Pauley v. U. S. 459 F.2d 624 (9th Cir. 1972).

^{11/} 330 F.Supp. 1150 (D.D.C.), aff'd sub. nom., Coit v. Green, 404 U.S. 997 (1971).

^{12/} 347 U.S. 483 (1954).

^{13/} 330 F.Supp. at 1164 (emphasis added).

policy. Under the conditions of today they can no longer be construed so as to provide to private schools operating on a racially discriminatory premise the support of the exemptions and deductions which Federal tax law affords to charitable organizations and their sponsors.

14/

2. The Presidential Libraries Act

A far more important statute than the Internal Revenue Code in evaluating the 1969 gift is the Presidential Libraries Act,^{15/} which applies specifically to gifts of papers by Presidents. The Act does not supplant the common law of gifts, but it reflects a strong Congressional policy of encouraging and facilitating Presidential gifts and is a vital consideration in determining under common law whether a valid gift was made. This thesis finds support in the Act's legislative history which is summarized below.

14/ Another example of the principle that the Internal Revenue Code must be construed to avoid frustrating other national policies is the line of cases holding over-ceiling payments under the Price Control Act of 1942 nondeductible as a business expense. There are approximately sixty cases to this effect annotated at 741 CCH STAND FED. TAX RPTR ¶1344.391. Still another example is Haberle Crystal Springs Brewing Co. v. Clarke, 280 U.S. 384 (1930), where the Supreme Court denied deductions (for obsolescence or losses) to owners of breweries following adoption of the Eighteenth Amendment because such deductions violated the national policy enunciated by the amendment even though the deductions might technically have been valid under Section 234 of the Revenue Act of 1918.

15/ 44 U.S.C. §2101 et seq.

a. Pre-1949 Legislation

Prior to 1949, the only legislation pertaining to the papers of Presidents were special appropriation bills providing funds for their purchase. Such legislation was necessary, as Appendix B shows, because the common practice of Presidents was to take their papers with them when they left office and convey them to their heirs.

b. The Federal Property And
Administrative Services
Act Of 1949 And Amendments

The origins of the Presidential Libraries Act may be traced to the Federal Property and Administrative Services Act of 1949.^{16/} The Act created the General Services Administration for the purpose of providing, among other things, an "economical and efficient system for. . .records management." In this connection, responsibility for the formerly independent National Archives Establishment (created in 1934) was transferred to the GSA Administrator. No mention was made of Presidential papers in the 1949 Act.

In 1950, Congress amended the Federal Property and Administrative Services Act by inserting a new title: "Federal Records" (sometimes referred to as the "Federal Records Act of 1950").^{17/} Section 507(e) of the 1950 Act provided:

^{16/} 63 Stat. 381.

^{17/} 64 Stat. 583.

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The [GSA] Administrator may accept for deposit --

(1) the personal papers and other personal historical materials of the present President. . . offered for deposit under restrictions respecting their use specified in writing by the prospective depositors: Provided, that restrictions so specified on such materials, . . . shall have force and effect during the lifetime of the depositor or for a period not to exceed twenty-five years, whichever, is longer, . . . : And provided further, That the Archivist determines that the materials accepted for such deposit will have continuing historical or other values.

* * *

Title to materials so deposited under this subsection shall pass to and vest in the United States.

The only pertinent comment in the legislative history on Section 507(e) is the following from the Senate Report of July 24, 1950: ^{18/}

Section 507(e)(1) is a new provision that would make it possible for the personal papers and other personal historical documentary materials. . . of the President and other high level Government officials to be preserved by the Government with related official records. Documents of this character, when they can be properly released for historical research, frequently constitute the most valuable of all the source materials of history. Their preservation in official custody

^{18/} S. Rep. No. 2140, 81st Cong., 2nd Sess. (1950) (emphasis added).

is highly desirable, but is not likely to occur unless adequate assurance is provided that their privacy will not be jeopardized for a reasonable period of time. The restriction on the use of such materials provided in this subsection is designed to assure this privacy.

The quoted passage from the Senate Report reveals that Congress thought it to be in the national interest to promote Presidential gifts by providing for the enforcement of access restrictions and thus relieving fears of privacy invasions that had led to the sequestering and destruction of papers by the families of earlier Presidents. With this background, it seems certain that the provision for GSA "acceptance" in Section 507 of the 1950 Act meant the acceptance of responsibility for enforcing access conditions. In effect, an acceptance represented a guarantee against invasions of privacy.

c. The Current Legislation

The Presidential Libraries Act, enacted in its present form in 1955,^{19/} amended the language of the 1950 legislation and made provision for the acceptance and operation of privately-initiated Presidential Libraries. The important language changes are highlighted in the following excerpt from what is now 44 U.S.C. §2107 by the bracketing of deleted language and the underscoring of language added in 1955:

^{19/} 69 Stat. 695, as recodified, 82 Stat. 1288.

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The Administrator [may] is authorized,
whenever he deems it to be in the public
interest, to accept for deposit --

(1) the [personal] papers and other
[personal] historical [documentary]
materials of [the present] any
President or former President. . .
[. . . offered for deposit under
restrictions respecting their use
specified in writing by the pro-
spective depositors: Provided, that
restrictions so specified on such
materials,. . . shall have force and
effect during the lifetime of the
depositor or for a period not to
exceed twenty-five years; which-
ever is longer,. . . : And provided
further, That the Archivist determines
that the materials accepted for such
deposit will have continuing historical
or other values;] and other papers
relating to and contemporary with
any President or former President.
. . . , subject to restrictions agreeable
to the Administrator as to their use;. . .

* * *

[Title to the materials so deposited
under this subsection shall pass to
and vest in the United States.] 20/

The legislative history of the 1955 Act reveals that
the impetus behind the legislation came from announcements by
Presidents Truman and Eisenhower of their intentions to build
hometown libraries in which to store their papers. These
announcements apparently raised fears within the General Services
Administration that Presidential papers would again be scattered

20/ The Presidential Libraries Act was recodified in 1968
(82 Stat. 1288), and the initial language of 44 U.S.C.
§2107 now reads: "When the Administrator of General
Services considers it to be in the public interest. . . ."

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and lost to the Government as they commonly had been in the 19th Century. Accordingly, GSA proposed amendatory legislation which contemplated the incorporation of Presidential libraries into the National Archives system and sought to make this arrangement attractive to potential Presidential donors by adding flexibility to the section dealing with the acceptance of papers. These motives are reflected in the following excerpts from the testimony of GSA Administrator Edmund F. Mansure and U. S. Archivist Wayne C. Grover before the House ^{21/}Government Operations Committee:

Mansure: These resolutions have a simple purpose. They will establish in law a system whereby Presidential papers, in their entirety, may become a part of the National Archives, by gift or by agreement. Presidential libraries financed by private contributions may be included. * * *

* * *

The Presidential library is a new institution in American life. * * * It is worth noting that Presidential libraries have proven necessary for the preservation of the papers of at least the last three Presidents. . . . With these eminent precedents, it is reasonable to expect Presidential libraries to become traditional depositories for the papers of the Presidency.

This legislation is wisely designed to incorporate these libraries in

21/ Hearings on H.J. Res. 330, 331, and 332 Before a Special Subcomm. of the House Comm. on Govt. Operations, 84th Cong., 1st Sess. (1955).

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the National Archives system. * * *
In this way, we can avoid the normal hazards of loss and dispersal which prevail when Presidential papers are passed down through heirs and friends.

* * *

In answer to that, there [would] probably be advantages [in placing Presidential papers in a single depository], but, of course, we are confronted with this practical question: The documents do belong to the individual Presidents, and I do not see how we can bring about a decision other than what they may want to do, or what their heirs may want to do. We are sort of at their mercy, and we are looking at this as a vehicle of [sic] at least getting some control over these documents and papers. (Emphasis added.)

Grover: Every President since George Washington has considered that the papers he accumulated in office were his personal property. Under our constitutional system, it is logical that the separate and independent status of the office should extend to and embrace the papers of the incumbent in office.

But it has long been recognized that though the papers of the Presidents are the property of the Presidents, the federal government has a vital interest in them. The papers of the Presidents constitute a vitally important part of the Nation's historical heritage. For over a hundred years our government and people have recognized that the history of this country cannot be properly written without them.

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Mansure: [T]here is nothing mandatory in the proposal. It is not an ill-conceived attempt to bind any future President. Instead, it will provide the vehicle by which the President is assured the integrity of his papers, their properly and orderly arrangement, and their eventual availability to the people as the historical record of his administration. (Emphasis added)

Grover: Well, Mr. Jonas, an iron-clad provision on title passing [of papers] the minute the government comes into possession of the documents would be too inflexible, in my opinion. It would put us at a certain disadvantage in acquiring other types of papers. * * * I think we should have that flexibility to have title pass over a period of time. (Emphasis added.)

The House Committee's report on the Presidential Libraries bill confirms the testimony of Messrs. Mansure and Grover that the new legislation was designed to make it easier and more attractive for Presidents to donate their papers than it had been under the 1950 Act. The following excerpt, for example, shows that the deletion of the 25 year limitation on access conditions was made to cater to Presidential donors who might desire a longer restriction period: ^{22/}

The essential differences between the provision of paragraph (1) of the existing subsection (e) [now 44 U.S.C. §2107(1)] and of this

^{22/} H.R. Rep. 998, 84th Cong. 1st Sess. at 4 (1955).

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paragraph are that this paragraph --

* * *

Deletes the provision in paragraph (1) . . . that limits the period during which restrictions on the use of materials deposited shall have force and effect to the lifetime of the depositor or to 25 years, whichever is longer, and provides that papers may be accepted for deposit subject to restrictions agreeable to the Administrator as to their use. It might well be desirable to restrict the use of some papers, such as private family papers or papers containing medical data for a longer period than 25 years. (Emphasis added)

The legislative materials on the 1955 Act also contain an enlightening explanation by Truman Librarian David D. Lloyd of the reasons why Presidents find it necessary to temporarily limit access to their papers. Portions of Mr. Lloyd's statement are set forth below: ^{23/}

The ex-President, whoever, he may be, is not going to allow the public access to his files unless he can protect the confidences of others that may be revealed in the papers. * * * Thousands of people write to the President under the seal of confidence. Some of these are official confidences, others are personal. Undiscriminating disclosures of such confidences may do much damage to persons still living and to continuing governmental policies. A President is under an obligation to protect these confidences. Unless this

23/ Hearings on H.J. Res. 330, 331, and 332 Before a Special Subcomm. of the House Comm. on Govt. Operations, 84th Cong., 1st Sess. at 49 (1955).

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need can be met, the papers may unreasonably be delayed in coming into public ownership or they may never be made public at all.

It is clear from the foregoing that the Presidential Libraries Act represents an effort to encourage and facilitate the donation of Presidential papers. The Act does not supplant the common law of gifts, but it is a vital consideration in determining under common law whether the 1969 gift was effective prior to the statutory cut-off date.^{24/}

3. The Common Law Of Gifts

As stated above, the common law of gifts provides the basic legal framework for evaluating charitable contribution deductions, including those at issue here. A gift is defined in common law as a present, irrevocable transfer of his property by one to another without consideration, and courts generally employ the criteria of donative intent, delivery and acceptance to determine whether such a transfer has occurred.^{25/} The Tax Court^{26/} stated the traditional standards in a recent decision as follows:

To obtain a deduction in 1967 under Section 170 for a charitable contribution, petitioner must show that he made a gift to charity in that year.

^{24/} See text accompanying notes 11-15 supra, pp. 20-21.

^{25/} See generally, Brown, The Law of Personal Property, Ch. VII (1955); Mechem, "The Requirement of Delivery in Gifts of Chattels," 21 Ill. L. Rev. 341 (1926).

^{26/} Willis Dalton v. Commissioner, 32 T.C. Mem. 782, 783 (July 27, 1973).

The essential elements of such a gift are donative intent, effective delivery, and acceptance.

The Court of Appeals for the Eighth Circuit provided a fuller recital of the common law criteria in the early case of Edson v. Lucas:^{27/}

[T]here is not complete harmony in the decisions as to the requirements necessary to constitute a valid gift inter vivos, but certain essential elements are not disputed. There must be a donor competent to make the gift, a clear and unmistakable intention on his part to make it, a donee capable of taking the gift, a conveyance, assignment, or transfer sufficient to vest the legal title in the donee, without power of revocation at the will of the donor, and a relinquishment of dominion and control of the subject matter of the gift by delivery to the donee.

Despite the distinctly mechanical ring to these formulations, judicial application of common law gift criteria has been anything but rigid.^{28/} The courts agree that the central issue in

^{27/} 40 F.2d 398, 404 (8th Cir. 1930). Cf., Richardson v. Commissioner of Internal Revenue, 126 F.2d 562, 567 (2nd Cir. 1955), where Judge Frank declared that "a completed gift involves two major ingredients: (a) an intention to make a gift, and (b) certain ritualistic or ceremonial conduct involving relinquishment by the donor of what is called dominion or control." (Emphasis added)

^{28/} Hebrew University Association v. Nye, 223 A.2d 397, 400 (Super. Ct. Conn. 1966) ("Formalism is not an end in itself. * * * Where the purpose of formalities is being served, an excessive regard for formalism should not be allowed to defeat the ends of justice.").

every gift case is the donor's intent,^{29/} and a clear manifestation of intent is frequently held to be curative of ambiguities and other mechanical imperfections. The pragmatic philosophy which pervades most of the common law gift cases is evident in the following statement of the Maryland Court of Appeals in Malloy v. Smith:^{30/}

While we do not intend to bend,
much less depart from, the hard-
and-fast rules of our prior decisions,
none would deny that they are to be
applied in a manner which will not
frustrate clear manifestations of
intent [by the donor] [citation omitted].

In ascertaining and giving effect to the donor's intent, the courts give controlling weight to the circumstances surrounding a purported gift.^{31/} Every transaction is evaluated in light of its own particular facts, and the triad criteria of intent, delivery and acceptance are applied flexibly to account for these circumstances. A typical articulation of this approach in a taxation context is contained in the following excerpt from the opinion of a U. S. district court

^{29/} See e.g., In re Earley's Will, 96 N.Y.S.2d 716, 720 (Sur. Ct. 1950). ("The donor's intention is paramount in gifts inter vivos just as it is in testamentary gifts."); Smith v. Smith, 313 S.W.2d 753, 756 (Mo. App. 1958) ("No special words are necessary to constitute a gift if the donor's intent clearly appears.").

^{30/} 290 A.2d 486, 489 (Ct. of App. Md. 1972).

^{31/} Professor Ray Andrews Brown states in his respected treatise on personal property that "to ascertain the probable intent of the alleged donor the court will consider the circumstances of the donor, the relationship between the parties, and the size of the gift and

in Apt. v. Birmingham: ^{32/}

Surrounding circumstances, including the conduct of the parties both prior and subsequent to the transaction in question, their testimony and the testimony of disinterested persons, the abilities and contributions of the parties, their relation to and confidence in each other, and any other factors which might throw light upon their true intent under the circumstances of a particular case must be scrutinized.

In sum, the decisions make it clear that every gift is treated under the common law as a special case. With this as background, comment can be made on each of the three common law gift criteria.

31/ (cont'd)

its relation to the total amount of the donor's property, in order to discover the reasonableness of the claim that the donor really intended to make the donation claimed." Brown, The Law of Personal Property, §48 at 130 (1955).

32/ 89 F.Supp. 361, 371 (N.D. Ia. 1950). See also Crilly v. Detter, 142 F.Supp. 490, 492 (D.Kan. 1956) ("In judging whether the requisite delivery has taken place, the special circumstances surrounding each case are controlling. . . ."); Slusmeyer v. Slusmeyer, 99 F.Supp. 484 (W.D. Ky. 1951), aff'd. per curiam, 200 F.2d 559 (6th Cir. 1952); Cushman v. Mason, 72 F.Supp. 487 (D.Minn 1947); In re Dzierski's Estate 296 A.2d 716 (S.Ct. Pa. 1972); Buckersfield's Ltd. v. B.C. Goose & Duck Farm Ltd., 511 P.2d 1360 (Wash. App. 1973); Arnoutt v. Griffin, 490 S.W.2d 701 (Tenn. App. 1972); In re Hoffman's Estate, 490 S.W.2d 98 (S.Ct. Mo. 1973); Lecci v. Nickerson, 313 N.Y.S.2d 474 (Spec.T. 1970); E.B. Lacey, 687 CCH STAND FED. TAX RPTR. ¶7917 (1968); A.W. Mellon, 36 B.T.A. 977 (1937); 38 C.J.S. -- Gifts §19 ("No absolute rule can be laid down as to what conduct will constitute a sufficient delivery to support a gift in all cases; whether what has been done was sufficient to constitute a delivery will depend on the nature of the property and the attendant circumstances.").

a. Donative Intent

Donative intent, as noted, is at once the threshold and paramount consideration in determining under common law whether a purported gift has been effected.^{33/} The common law requires a demonstration in every case that the donor intended gratuitously to pass title in his property to the donee before a gift can be sustained. If the intention is clearly shown, courts in many circumstances will sustain a gift even though the remaining common law criteria are not fully satisfied.

The controlling weight which courts place on donative intent is no more clearly illustrated than in In re Roosevelt's Will,^{34/} the closest known case on its facts to the situation at issue here. In 1938, President Roosevelt announced at a garden party attended by a small group of friends and historians that he intended to establish a library and donate it and his papers to the United States. The press reported the announcement, and after money for the library had been collected privately, Congress adopted a resolution accepting it into the National Archives system. President Roosevelt then delivered a small group of papers to the library but retained the bulk of them up to the time of his death. Apart from his original announcement, the evidence of his intent to donate the undelivered

^{33/} In re Wilson's Estate, 206 N.Y.S.2d 323 (Sur. Ct. 1960); Bank of America v. Cottrell, 20 Cal. Rptr. 126 (Cal. App. 1966). In re Earley's Will, 96 N.Y.S.2d 716 (Sur. Ct. 1950).

^{34/} 73 N.Y.S.2d 821 (Sur. Ct. 1947). See Appendix A.

papers included a memorandum which he had written to his personal librarian in 1943 expressing a desire to cull out personal papers before completing the transfer. However, he died without ever getting around to this task.

The New York Surrogate opened his opinion by formally reciting the familiar criteria of delivery, donative intent and acceptance but in the end concluded that a gift of the undelivered papers had been perfected, notwithstanding the President's desire to extract personal items. Although the Surrogate's opinion intimated that evidence existed of "constructive" delivery and acceptance, there can be no doubt that his conclusion rested on the fact that the surrounding circumstances reflected sufficient evidence of donative intent and other positive considerations (such as the national interest in receiving the papers) to sustain the gift. Significantly, the Surrogate reached this conclusion without the supportive weight of the Presidential Libraries Act, which had not yet been enacted.

Numerous other gifts have been sustained despite an ambiguous delivery or no delivery at all where the surrounding circumstances reflected clearly the donor's intent to make a gratuitous transfer. An important example is Hebrew University Association v. Nye,^{35/} where the alleged donor owned a large collection of books and manuscripts assembled by her late

^{35/} 223 A.2d 397 (Super. Ct. Conn. 1966).

husband, a biblical scholar. While traveling in Israel, she decided to donate the collection to Hebrew University and announced this intention at a luncheon held in her honor. She later approved a press release announcing the gift and refused offers to purchase the collection. Prior to her death, she spent time arranging and cataloging the collection but had not delivered it when she passed away. Nevertheless, the Connecticut court had no difficulty in finding a valid inter vivos gift.

In re Frothingham's Will^{36/} is also especially pertinent because a New York Surrogate held there that instructions to the alleged donor's agent were sufficient in themselves to perfect an inter vivos gift despite the absence of delivery. The donor was a resident of France whose financial affairs were handled by a New York investment firm which held his securities in a street name. In 1935, the firm wrote its client recommending that he make a gift of securities to his wife before year-end to realize tax savings in advance of an anticipated change in the law. The donor indicated his interest in the plan, and the firm wrote a second letter suggesting specific securities for the gift program. The donor accepted recommendations in a return letter, but he died before the firm had acted. The Surrogate nevertheless upheld the gift with the following significant observation:^{37/}

^{36/} 291 N.Y.S. 656 (1936).

^{37/} Id. at 660. Other decisions in which gifts were upheld largely on evidence of donative intent include:
Edna B. Lacey v. United States, 687 CCH STAND. FED.

Where the intention of the donor is proved under his own hand, the courts have presumed a delivery in support of a gift on slight evidence.

The three referenced decisions are significant, because they sustained gifts on the strength of donative intent and favorable background circumstances, even in the absence of delivery. In the case of President Nixon's 1969 gift, those same elements were present, and, in addition, the property in question was delivered. As the next section demonstrates, whatever ambiguity may have existed in connection with the delivery would not deter a court from sustaining the gift if it was satisfied with the evidence of the President's donative intent.

b. Delivery

Evidence of donative intent is often subjective, and courts normally insist upon corroborative evidence in the

37/ (cont'd)

TAX RPTR. ¶7917 (1968) ("Particularly in the case of charitable gifts the requirement of delivery is not to be applied in a rigid and formalistic way."); Slusmeyer v. Slusmeyer, 99 F.Supp. 484 (W.D. Ky. 1951), aff'd. per curiam, 200 F.2d 559 (6th Cir. 1952) ("It is too well understood to call for the citation of authorities that the declarations and conduct of the grantor in relation to the instrument may be such as to become equivalent to such actual delivery, and in every case the crucial test is the intent with which the acts and declarations are made, and that intent is to be ascertained from the conduct of the parties, particularly the grantor, and all the surrounding circumstances of the transaction."); Campbell v. Prothro, 209 F.2d 331 (5th Cir. 1954); A.W. Mellon, 36 B.T.A. 977 (1937); Tucker v. Welch, 36-2 CCH T.Ct. Mem. ¶9431 (1936).

form of actual or constructive delivery. In many cases this means there must be a transfer of possession and dominion from one party to another.^{38/}

The requirement of delivery was explained in Crilly v. Dettler^{39/} where the administrator of an estate sued to recover bearer bonds from the decedent's sister. There was testimony that the decedent had told his sister that he had some \$11,000 in bonds in a safe deposit box which he wanted her to have after she had given an amount which seemed fair to his former wife. It also appeared that he had directed a nephew to obtain the bonds for his sister and that this had been accomplished after the decedent's death. Persuaded that the decedent intended to make a gift, the court sought in the following passage of its opinion to put the requirement of delivery in proper perspective:^{40/}

In judging whether requisite delivery has taken place, . . . the special facts and circumstances surrounding each case are controlling inasmuch as the basic requirement of delivery was initiated into the law so that the intent of the alleged donor would be measurable by some objective standard thereby guarding against specious claims of gift. However, it is recognized that where the personalty is already in

^{38/} See generally, Mechem, "The Requirement of Delivery in Gifts of Chattels," 21 Ill. L. Rev. 341 (1926).

^{39/} 142 F.Supp. 490 (D.Kan. 1956).

^{40/} Id. at 492 (emphasis added).

the possession of the donee no added evidence of delivery need be present; and, where the property is in the possession of a third person there need be no manual delivery by the donor to the donee. In the instant case, the evidence pointed to a present intent on the part of the donor to give the beading tools, equipped with a tag and of a reasonable size, available to consummate such gift.

It is clear from the Crilly decision that the delivery requirement has a practical, evidentiary function, and courts are apt to resort, as the district court did there, to an examination of surrounding circumstances in determining its satisfaction. Where delivery is surrounded by ambiguity, donative intent frequently becomes a critical evaluative tool. This was the case, for example, in Slusmeyer v.
41/
Slusmeyer, where the district court emphasized that delivery depends largely on the intention of the parties, particularly the donor, as evidenced by their conduct and the surrounding circumstances. On this basis, the court in Slusmeyer found sufficient evidence of delivery in a mere statement of the donor directing the donee to pick up certain property on his
42/
way home.

41/ 99 F.Supp. 484 (W.D.Ky. 1951), aff'd per curiam, 200 F.2d 559 (6th Cir. 1952).

42/ Accord, Waite v. Grubbe, 73 Pac. 206 (S.Ct. Ore. 1903).

The cases reflect a wide range of questions regarding ambiguous deliveries, but the discussion here can be confined to whether delivery is adequate when (i) the gift consists of a specified, albeit undivided interest in delivered property; (ii) some element of control over the property is retained by the donor (iii) the "potential" for revocation exists; and (iv) there is no immediate communication with the donee. These questions will be examined briefly below.

(i) Gifts Of Undivided
Interests In Chattels

Several observers have argued that the 1969 gift failed, despite the President's clear intent, because of untimely segregation. However, the courts and the Internal Revenue Service now recognize the validity of gifts consisting of specified but undivided interests in delivered property in a wide variety of circumstances.^{43/} These closely analogous situations are simply treated as involving ambiguous deliveries, similar, for example, to where the donee is possessed of property before it is given,^{44/} and they are generally handled by placing greater

43/ See generally, Annotation, "Delivery Which Will Support Gift of an Undivided Interest in a Chattel or Chose in Action," 145 ALR 1386 (1943); Annotation, "Creation of Joint Savings Account or Savings Certificate as Gift to Survivor," 43 ALR 3d 971 (1972); Regs. §§1.170A-5(2) and 1.170A-7(b).

44/ Lewis v. Burke, 214 N.E.2d 196 (Ind. App. 1966). Professor Brown confirms that courts have not hesitated to find adequate delivery where the subject matter of the gift is already in the possession of the donee: "Where the subject

emphasis in the decisional process on the donor's expression of intent and the surrounding circumstances.

Gifts are commonly made of undivided interests in bank accounts and the contents of safe deposit boxes. A situation of this type gave rise to Collins v. McCannless,^{45/} wherein a decedent's widow challenged the State Tax Commissioner's determination that inheritance taxes were due on \$115,000 in bonds that had been found in a safe deposit box. She claimed that her husband had given her inter vivos an undivided one-half interest in the bonds, but the Tax Commissioner resisted the notion that a gift of an undivided interest could be valid. The Tennessee Supreme Court, however, was satisfied by evidence that the decedent intended to make such a gift and sustained it on the following rationale:^{46/}

We are not willing to hold that an undivided interest in a chattel or chose in action cannot be the subject of a valid gift. While delivery is necessary to complete

44/ (cont'd)

matter of a proposed donation is in the possession of the contemplated donee, it is unnatural to suppose the average donor, unadvised concerning the technical requirements of the law of gifts, would require that the donee temporarily return to the donor the said subject matter, for the mere purpose of allowing him to redeliver it to the object of his benefaction. As the courts have often said, this would be a meaningless and useless ceremony." Brown, Personal Property §44 at 112 (1955).

45/ 169 S.W.2d (S.Ct. Tenn. 1943).

46/ Id. at 854.

a gift, in such a case only a constructive delivery can be exacted. In other words, as said by this court [citation omitted] "when it is once ascertained that it is the intention of the donor to make such a gift, and all is done which is possible under the circumstances in the matter of delivery, the gift will be sustained." This rule was not announced with respect to a gift of an undivided interest but should have a more ready application in such a case.

* * *

There is no doubt on this record of the intention of the deceased to give his wife a half interest in these bonds. * * * The proof is very clear and shows that the husband never thereafter asserted any claim to the whole interest in the bonds but, when the coupons were clipped, always divided the coupons equally between his wife and himself. Such being the facts, we think the gift was complete.

A case somewhat closer on its facts to the instant situation was Andrus v. Commissioner of Internal Revenue ^{47/} where several members of a family conveyed their undivided interests in property to a charitable corporation and took back notes representing four-fifths of the aggregate value. They then cancelled the notes in increments over a period of years. The Commissioner's contention that interests in the gift property could not be divided between donor and donee was rejected by the Court of Appeals for the District of Columbia Circuit.

^{47/} 50 F.2d 332 (D.C. Cir. 1931).

It is noteworthy that the Internal Revenue Service's regulations now specifically contemplate charitable contribution deductions for gifts of certain undivided interests. Section 1.170A-5(a)(2) of the IRS regulations^{48/} permits deductions for contributions of an "undivided present interest in property" as distinguished from a future interest in tangible property, and Section 1.170A-7(b) permits deductions on contributions of "an undivided portion of a donor's entire interest in property."

(ii) Retention Of Control
Over Donated Property

It is frequently said that there must be a relinquishment of both possession and control over donated property to satisfy the requirement of delivery. Yet, while reciting this rule, many courts will sustain gifts on findings that they consisted of present rights to the subject matter, with enjoyment being postponed or temporarily curtailed. For example, in the early case of Schollmier v. Schoendelen,^{49/} a court upheld as valid and present a gift of a bank account to take effect on the donor's death upon evidence that the passbook had been delivered. It reasoned that the deferment of the withdrawal privilege until the death of the donor "related to the time when the interest transferred might be enjoyed, not to its transfer."

^{48/} Section 1.170-1(d)(2) in pre-1969 Tax Reform Act Regulations.

^{49/} 43 N.W. 282 (S.Ct. Ia. 1889). See also, In re Hitchcock's Estate, 483 S.W.2d 617 (Mo. App. 1972).

The abstruse line between present, unconditional gifts and future or restricted gifts does not present a problem in a case where access restrictions are placed upon a gift of papers under the Presidential Libraries Act. The Act explicitly recognizes the necessity and desirability of such restrictions and promotes Presidential gifts by guaranteeing their enforcement. To this extent the provisions of the Act clearly take precedence over the common law, validating restricted gifts which might otherwise be considered invalid.^{50/} Thus, there has never been a question concerning the validity of gifts of papers under the Act despite the fact that every one of them has retained for the donor power to control access to the donated property.^{51/}

(iii) The "Potential"
For Revocation

A gift must be irrevocable to be valid at common law. However, it might be said that a "potential" for revocation in virtually every gift situation where delivery is ambiguous. This was certainly true in the Roosevelt case where the record showed no direct communication with an official donee and a clearly stated intention on the part of the President to extract personal papers from the bulk of documents which he retained in his possession.

^{50/} See text accompanying notes 11-15 supra, pp. 20-21.

^{51/} See Appendix B.

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Courts typically deal with a situation involving a potential for revocation as they do with other situations -- by looking to the donor's intent as reflected in surrounding circumstances. For example, in 199 U.S. 52/ 100 F.2d 100, a potential for revocation existed because the property was in the hands of a third party at the time of the purported declaration of donative intent, thus making actual delivery impossible. The court nevertheless sustained the gift on the ground that donative intent had been satisfactorily demonstrated. Its reasoning is set forth in pertinent part below: 53/

In the case at bar there were no words to indicate that the gift was a conditional one which would be revocable if the decedent survived her illness. The decedent's words were clear and constituted a present gift which would have been binding whether the decedent lived or died.

A similar approach is reflected in the Hebrew University case, discussed above, where the court examined the donor's conduct after her declaration of donative intent to determine whether the gift was irrevocable. The fact that delivery had not been made at the time of her death was no deterrent in the court's view to sustaining the gift.

(iv) Communication
With the Donee

There is no common law requirement that the donor or his agents communicate with the donee to perfect delivery. Instead,

52/ 206 N.Y.S.2d 323 (Sur. Ct. 1960).

53/ Id. at 327.

courts generally follow the rule that a gift to a donee without his knowledge, if made with the requisite intent, vests title in him immediately, subject to his right to repudiate it when informed.^{54/}

* * *

The foregoing discussion of four problem areas relating to the requirement of delivery makes it clear that ambiguity affecting delivery will not defeat a gift if the court is otherwise persuaded on the element of donative intent.

c. Acceptance

Of the three common law gift criteria, acceptance is the least important and most flexible. In fact, many courts no longer deem the criterion worthy of discussion unless there is evidence of a repudiation by the donee.^{55/} In Allender v. Allender, a Maryland Court gave expression to the current state of judicial thinking when it declared that "the gift is effective on transfer, subject to the right of the transferee to repudiate title and refuse to accept the gift."^{56/} Under this view the "requirement" of acceptance can more accurately be described as a "negative requirement" that there be no rejection.

^{54/} See e.g., Streeper v. Myers, 7 N.E.2d 554 (S.Ct. Ohio 1937); Halisey v. Howard, 172 A.2d 379 (S.Ct. Conn. 1961).

^{55/} Cf. Richardson v. Commissioner of Internal Revenue, 126 F.2d 562 (2nd Cir. 1955), where Judge Frank recognized only two common gift criteria.

^{56/} 87 A.2d 608, 610 (Md. App. 1952).

Courts which persist in recognizing an affirmative acceptance standard are generally content to infer its existence from the surrounding circumstances or from conduct of the donee which is not contemporaneous with delivery.^{57/}

C. Assessment Of The 1969 Gift

The foregoing discussion indicates that one evaluating the deductions taken to reflect President Nixon's 1969 gift of papers should have as his paramount concern the President's intent. If the evaluator finds evidence of donative intent, he should then look for some corroborative evidence in the form of actual or constructive delivery or other supportive circumstances to confirm that the President really intended to donate his papers. Finally, he should determine whether there is any evidence of repudiation by the General Services Administration. If he is satisfied with respect to each of these counts on the basis of actions or events prior to July 25, 1969, his conclusion should follow that the deductions taken on behalf of the President were legally permissible.

The pertinent, undisputed facts are these: Shortly after his first inauguration, President Nixon expressed to his counsel,

^{57/} See, e.g. Speaker v. Keating, 36 F.Supp. 556, 564 (E.D.N.Y. 1941) ("Acceptance which may be actual or implied and may be evidenced by words and conduct, need not be contemporaneous with delivery, but may be manifested subsequently"); Miller v. Herzfeld, 4 F.2d 355 (3rd Cir. 1925); Strand v. United Methodist Church, 298 N.E.2d 779 (Ill. App. 1973).

Mr. Ehrlichman, a desire to donate in 1969 as great a volume of his pre-Presidential papers as he could treat as a deduction in that year and the statutory carry-over period, and to give any remaining papers later. Mr. Ehrlichman passed this directive on to Mr. Morgan of his staff with orders to implement it immediately. Mr. Morgan, working with other Presidential representatives, caused the President's pre-Presidential papers to be delivered to the National Archives in late March. The General Services Administration thereupon took immediate steps to achieve "intellectual and physical control" over the papers on the understanding that they were delivered for "gift purposes." GSA also assumed the initiative of enforcing access restrictions with respect to the 1969 papers which had been imposed on an earlier gift of papers by President Nixon.

Immediately following the March 1969 delivery, President Nixon's representatives computed a dollar value for the 1969 gift on the basis of the formula supplied by the President. They also made arrangements for the segregation and final appraisal of a volume of papers representing this value and took initial steps to prepare backup documentation on the gift for tax purposes.

All of these actions were taken well before the effective date of pertinent amendments to the Internal Revenue Code, indeed before the amendments had even been proposed. They clearly represent evidence of the requisite donative intent

and negate any inference of a repudiation by the General Services Administration.

As reflected in the reported testimony of Mr. Ehrlichman and other witnesses before this Committee, the President's expressed intent was to make a gift in 1969 of as great a volume of his papers as he could treat as a deduction in that year and the statutory carry-over period. Mr. DeMarco reportedly was led to believe that the 1969 gift papers had been segregated prior to July 25, 1969, and thus took deductions for the President upon the rationale that the gift consisted of specifically identified papers.

However, when the 1969 gift is viewed (as it must be) through the eyes of the donor, it is far more realistic to characterize it as a gift of a specified interest in a group of papers all of which were intended for ultimate donation. When the President communicated his intent to Mr. Ehrlichman he did not know what the monetary value of the gift would be or whether it would consist of all or a portion of his pre-Presidential papers remaining after the 1968 gift. In other circumstances a court might expect a donor to make these determinations himself and communicate directly with the donee if it was really his intention to make a gift; however, the same expectation would not be justified in the case of a President. Considering the public responsibilities of his office and the extraordinary demands on his time, President Nixon did all he could reasonably be expected to have done in effecting the 1969

gift. He articulated clearly his intent to donate a specified interest in the papers, directed his staff to see that it was carried out immediately, and conducted himself thereafter in a manner entirely consistent with his expressed intent.

An expression of donative intent comparable to President Nixon's was held to be sufficient to support the gift in the Roosevelt case, even without the aid of a corroborative delivery. In the current situation the papers were delivered, and other corroborative actions were taken by the President's representatives. The legal sufficiency of the delivery clearly was not destroyed by the facts that there was no direct communication between the President and the General Services Administration, that the gift papers consisted of a specified interest in a larger mass, and that a "potential" for revocation (as described above) might be said to have existed. These facts were nothing more than minor ambiguities in the evidence corroborating the President's expression of donative intent, and they are easily dispelled by reference to that expression, the donor's position, and the circumstances surrounding the gift. The gift was completed and confirmed well before July 25, 1969, and no segregation or formal documentation was necessary to vest in the United States the interest in the papers specified by the President.

The President's retention of a power temporarily to control access to the gift papers likewise did not affect the sufficiency of their delivery, despite the common law

requirement that delivery be accompanied by a relinquishment of dominion. The Presidential Libraries Act explicitly contemplates and sanctions access restrictions, and in this regard its provisions unquestionably take precedence over the common law. If this were not true, the gifts of all Presidents from Truman through Johnson would be invalid under the theory of some observers that restrictions on gift papers are prohibited. The fact is, however, that the conditions imposed by President Nixon were not inconsistent with common law principles. The 1969 deed states explicitly that

[t]his conveyance is made to
the United States of America
without any reservation to the
undersigned, Richard M. Nixon,
of any intervening interest or
any right to the actual possession
of the said materials. . . ,

The deed's only stipulation was that during the time President Nixon remained in office, his common law copyright interests in the papers and those of others were to be enforced; at the end of this period the President's interests were to be considered waived. Thus, the access provisions in the deed must be viewed as representing a deferred waiver of copyright interests which normally would remain in effect even after a transfer of the papers. ^{58/}

58/ See, Baker v. Libby, 97 N.E. 109 (S.Ct. Mass. 1912) wherein the Court confirmed English precedents that the property right in words of a private letter remain in the author notwithstanding a transfer of the letter itself. See also, Nimmer, Copyrights

Finally, with respect to the common law criterion of acceptance, it is clear that this "requirement" has evolved in the cases as a negative standard. Nonetheless, there is considerable affirmative evidence of acceptance by the General Services Administration before and after July 25, 1969. In addition, the Presidential Libraries Act must be interpreted as a prior acceptance by Congress of all Presidential gifts of papers, and it stands as testimony to the controlling public interest in promoting, facilitating, and insuring the validity of Presidential gifts.

58/ (cont'd)

§64 (1973); Folsom v. Marsh, Fed. Cas. 342 (C.C. Mass. 1841) (wherein Justice Story held that the letters of George Washington were property subjects of copyright protection). Congress has specifically recognized common law copyright interests in private papers which come into the possession of the United States Records Act of 1950, and while it has immunized the Federal Government against damage suits in connection with these interests, it has not restricted the right of private parties to enforce their interests by injunctive action. See, 44 U.S.C. §2113 and S.Rep. 2140, 81st Cong. 2nd Sess. (1950).

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V

CONCLUSION

For all of the reasons stated, the undersigned attorneys
for President Richard M. Nixon respectfully urge this Committee
to confirm the validity of charitable contributions taken for
the President's 1969 gift of papers.

Respectfully submitted,

Kenneth W. Gemmill

H. Chapman Rose

Attorneys for President
Richard M. Nixon

Dated: February 19, 1974

BEFORE THE
JOINT COMMITTEE ON INTERNAL REVENUE TAXATION
Washington, D. C.

MEMORANDUM SUPPORTING THE NONRECOGNITION
OF GAIN ON THE SALE OF PRESIDENT AND MRS. NIXON'S
NEW YORK CITY RESIDENCE IN 1969

Kenneth W. Gemmill
H. Chapman Rose

Attorneys for President
Richard M. Nixon

Dated: February 19, 1974

MEMORANDUM SUPPORTING THE NONRECOGNITION
OF GAIN ON THE SALE OF PRESIDENT AND MRS. NIXON'S
NEW YORK CITY RESIDENCE IN 1969

I

INTRODUCTION

In 1963, President and Mrs. Nixon purchased stock in a New York City housing cooperative known as the 811 Fifth Avenue Corporation which entitled them to occupy one of the apartments in the corporation's building. They used the apartment as their principal (and only) residence until 1969 and then sold it at a gain of \$142,912. The Nixons did not recognize this gain for tax purposes because in the same year they purchased and occupied a home in San Clemente, California, at a price exceeding that which they realized on the New York sale. Their basis for not recognizing the gain was Section 1034 of the Internal Revenue Code, which provides that a realized gain on the sale of a residence need not be recognized if the taxpayer purchases or builds a replacement home within a specified period.

The Nixons' nonrecognition of their gain on the New York transaction became a matter of dispute recently, and the President asked this Committee on December 8, 1973 to

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determine under applicable legal standards whether his and the First Lady's treatment of the gain was proper.

The undersigned personal counsel for the President have prepared this memorandum to detail the supporting grounds for the Nixons' position. As we will demonstrate, the New York and California transactions met all the tests of Section 1034: the Nixons used the New York apartment as their principal residence from 1963 until they sold it in 1969; in the same year, they purchased the San Clemente property at a price exceeding the adjusted sales price on the apartment; after renovating the new house, they occupied it and ever since have treated it as their principal residence and home within the meaning of Section 1034.

II

STATEMENT OF FACTS

On May 14, 1963, President and Mrs. Nixon purchased 770 shares of common stock in 811 Fifth Avenue Corporation, thereby acquiring a right to occupy one of the apartments in the corporation's building. They paid the full \$100,000 price for the stock at the time of purchase. The Nixons then severed many of their California ties, including Mr. Nixon's relationship with a Los Angeles law firm and numerous

club affiliations, and moved into the New York apartment. They resided there for the next five and a half years, paying New York State income taxes, and voting in that state.

Just before the President's inauguration in 1969, the Nixons moved out of their New York apartment and did not return. At the same time, they began looking for a replacement home in California where the President and First Lady had lived much of their lives and had their deepest roots. To facilitate this search, they shifted major outside responsibility for their personal affairs from a New York to a Los Angeles law firm and, in April, directed their new attorneys to create a revocable trust as a vehicle for acquiring a California residence.^{1/}

At the end of May, while still looking for a home in California, the Nixons contracted to sell their stock in 811 Fifth Avenue Corporation for \$311,500. Considering capital improvements and expenses relating to the sale, their basis

^{1/} The trust was established at Title Insurance and Trust Company in Los Angeles by a letter of instruction from the President's California attorneys dated April 24, 1969. It was formed for the express purpose of acquiring title and making such disposition of the property as was appropriate, and it has not engaged in any other activities.

in the stock was \$166,860, and they realized a gain on the sale of \$142,912. The transaction was closed on June 30, 1969.

Meanwhile, in California, the Nixons' trustees were engaged in negotiations with the owners of property in San Clemente known as the Cotton Estate. The President and First Lady visited the property themselves on three occasions and expressed a desire to make it their new home. Accordingly, on July 15, 1969, the trustees purchased the entire 26 acre tract for \$1,400,000. While the Nixons intended to use only 5.9 acres, including the home and other improvements, as their residence, they found it necessary to purchase the entire estate in order to obtain the residential parcel. The trustees purchased some additional acreage in October in order to provide the Nixons with better access to their home and afford them more privacy. A year later, the trustees sold the entire non-residential tract to the B&C Investment Corporation for \$1,249,000. The remainder of the property, constituting the Cotton estate homesite, remains beneficially owned by the President and First Lady through their revocable trust.

Shortly after acquiring the San Clemente residence, the Nixons had it redecorated and moved most of their personal effects and some of their furniture out from New York. They gave much of the furniture that was not moved to their daughters and purchased additional furniture in California. Very little of the furniture and effects which the Nixons had in

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New York was moved to the White House, because the custom there has always been to utilize only early American furniture that belongs to the Federal Government and is part of the national heritage. Thus, while the President's duties as Chief of State required his presence in the White House during much of the year, the Nixons established their personal home at San Clemente.

The Nixons' decision to re-establish their home in California reflected their deep roots in that State. The President was born in California and received his elementary, high school and college education there. He ran for local, statewide, and national office, and practiced law in Southern California at various times during his career. Both he and the First Lady voted in California for most of their lives and re-registered there on January 8, 1970.

The Nixons re-established many of their California ties upon their return in 1969. The President currently maintains memberships or honorary memberships in the East Whittier Friends Church, the Rotary Club of Whittier, American Legion Post 51, the California State Society, the Bohemian Club of San Francisco, the Los Angeles Country Club, the Yorba Linda Country Club, the Irish Setter Club of Southern California, the Balboa Bay Club, the Automobile Club of Southern California, the Commonwealth Club of California, the Whittier Jaycees, the Whittier College Board of Trustees, and the Society of California Pioneers. The Nixons now attend church in California at the San Clemente Presbyterian Church.

President and Mrs. Nixon's close current attachment to California is also reflected in the facts that they have assigned major outside counsel responsibility for their personal affairs to a Los Angeles law firm and their tax preparation to a California certified public accountant. The President's will recites that he is a resident of Orange County, California, and his attorneys have planned his estate on the premise that he is subject to California's community property laws. Licenses for the family pets and similar permits have been obtained from the State of California.

Significantly, the Nixons have treated San Clemente as much more than a vacation spot and a future retirement home. In their minds it is their home now, and they have spent major blocks of time living and working there in every year since 1969. They spent 35 days at San Clemente in 1969, 50 days in 1970, 50 days in 1971, 34 days in 1972, and 42 days in 1973. In the period beginning on the date the San Clemente property was purchased and ending one year after the sale of the New York apartment (July 15, 1969 through May 31, 1970), the Nixons spent 49 days at their California home. Except for overnight trips, the Nixons have not stayed anywhere else in California since they purchased the San Clemente residence and have not permitted anyone other than their guests to stay there.

III

DISCUSSION

Section 1034(a) of the Internal Revenue Code, which provides for the nonrecognition of gain upon the replacement of a residence, reads as follows:

If property (in this section called "old residence") used by the taxpayer as his principal residence is sold by him after December 31, 1953, and within a period beginning 1 year before the date of such sale and ending 1 year after such date, property (in this section called "new residence") is purchased and used by the taxpayer as his principal residence, gain (if any) from such sale shall be recognized only to the extent that the taxpayer's adjusted sales price (as defined in subsection (b)) of the old residence exceeds the taxpayer's cost of purchasing the new residence.

The issues raised by this provision in the instant context are (1) whether the Nixon's New York apartment qualified as an "old residence" by virtue of their ownership of stock in 811 Fifth Avenue Corporation; (2) whether the Nixons purchased the San Clemente property at a price exceeding the adjusted sales price of the New York apartment; and (3) whether they used San Clemente as their principal residence within one year after selling the New York property. These issues will be examined below.

1. The New York Apartment Qualified
As An "Old Residence"

President and Mrs. Nixon moved to New York in 1963, purchased stock in a New York housing cooperative, and resided exclusively in an apartment owned by the cooperative until the President's inauguration in 1969. In these circumstances there can be no question that the New York apartment qualified under Section 1034 as an "old residence". Section 1034(f) provides that a "tenant-stockholder" in a cooperative housing corporation (as defined by §216(b) of the Code) may treat as a principal residence the house or apartment which his stockholding entitles him to occupy. The Nixons clearly were "tenant-stockholders" under Section 216(b) inasmuch as (a) the 811 Fifth Avenue Corporation had but one class of stock; (b) the Nixons' right to occupy their apartment arose solely from ownership of the stock; (c) the cooperative's shareholders were not allowed to receive distributions from the corporation other than from earnings and profits; (d) at least 80 percent of the corporation's earnings were derived from tenant-stockholders; and (e) the purchase price of the Nixons' stock was paid in full to the corporation.

2. The Price Of The San Clemente
Residential Tract Exceeded The
Adjusted Sales Price Of The
New York Apartment

The Code provides that a gain need not be recognized where the cost of a new residence exceeds the "adjusted sales

price" of the old residence. "Adjusted sales price" is defined in Section 1034(b) as the "amount realized, reduced by the aggregate of the expenses for work performed on the old residence in order to assist in its sale.

President and Mrs. Nixon sold their stock in 811 Fifth Avenue Corporation for \$312,500. Deducting expenses of the sale, the adjusted sales price on the stock was \$309,772.55. The total price paid in 1969 for the 26 acre Cotton Estate was \$1,400,100. Of this amount, \$251,100 was allocated on the Nixons' tax returns to the 5.9 acre residential tract which the President and First Lady retained. Mr. Arthur Blech, the accountant who prepared the President's tax returns, has reported that improvements of \$103,650 were made to the property within one year of purchase. Also \$5,273, being the portion of the \$25,000 real estate agent's commission, and \$4,293, the amount expended for a soil survey, may be added to the purchase price. Based on these figures, the total cost of the residential tract for purposes of these calculations was \$360,023. Thus, the price of the Nixons' new residence exceeded that of the old residence by \$50,250.45.

3. The Nixons Used The San Clemente Property
As Their Principal Residence Within One
Year After The New York Sale

The following language from Section 1.1034-1(c)(3)(i) of the Treasury regulations is pertinent in determining whether the San Clemente property qualified as the Nixon's "new residence"

within the meaning of Section 1034:

Whether or not property is used by the taxpayer as his residence, and whether or not property is used by the taxpayer as his principal residence (in the case of a taxpayer using more than one property as a residence), depends upon all the facts and circumstances in each case, including the good faith of the taxpayer.

The requirement that the new residence be "used" by the taxpayers within one year following the sale of the old residence refers to physical occupancy and frequently is strictly applied. Thus, in John F. Bayley,^{2/} the taxpayer was required to recognize the gain on his old residence despite the fact that he had contracted to have a new residence built before the statutory deadline and was prevented from moving in only by reason of contractor delays. In the instant case, however, the Nixons clearly satisfied the use requirement by residing at San Clemente for 49 days in the year following their sale of the New York cooperative.

The question, therefore, comes down to whether San Clemente was the Nixon's "principal residence" despite the fact that they necessarily spent much of their time at the White House on official duties. As reflected in the cited Treasury regulation, this issue turns on all the facts and circumstances of the case, including the good faith of the taxpayers. Cases such as this

^{2/} 35 T.C. 288 (1960).

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one involving two residences are generally decided by ascertaining the taxpayer's intent. In United States v. Sheahan,^{3/} for example, the Court of Appeals for the 5th Circuit emphasized that^{4/}

the good faith of the taxpayer is a circumstance to be weighed, and it may be the decisive factor in a close case in determining whether one of two houses is the principle residence, or whether the house is a residence. . . . ^{5/}

Because of the subjective nature of the intent test, the decisions are of little help in determining whether San Clemente or the White House was the Nixon's "principal residence" in the year following the sale of the New York apartment. However, some enlightenment can be taken from William C. Stolk,^{6/} which appears closer to the borderline than any case we have found. Mr. Stolk was an executive with American Can Co. and for many years commuted to his office in New York City from the distant Westchester suburb of Chappaqua. As he rose to the

^{5/} See also, R.W. Aagaard, 56 T.C. 191, 203 (1971) (where the Tax Court attached significance to what the taxpayers "regarded as their principal residence"). Cf., A.R. Barry, 30 T.C. Mem. 757, 760 (1971) (where, in determining whether a house which the taxpayer had rented out could qualify as his "old residence," the Tax Court gave great weight to "what the petitioner always considered. . .to be his principal residence and at all times intended to occupy. . . .").

^{6/} 40 T.C. 345 (1963), aff'd. per curiam, 326 F.2d 760 (2nd Cir. 1964).

top of the company, commuting became more inconvenient, and in 1950 he leased a small apartment in New York and lived there five days a week with his family. In 1953, the Stols moved to a large penthouse apartment on Park Avenue which they furnished themselves and occupied at all times except weekends and holidays. Several months later Mr. Stolk closed his Chappaqua home and stored his furniture, much of which was very valuable. At the same time, he began seeking a replacement for Chappaqua which would permit him to indulge his interest of farming and to which he could retire twelve years hence. In mid-1955, after exploring numerous areas, he found a suitable farm near Charlottesville, Virginia, some 427 miles from New York, and purchased it while selling the Chappaqua residence. He furnished the farmhouse with his Chappaqua furniture and with his family, began commuting to Virginia on weekends. He continued, to maintain an apartment in New York for use during the week.

A majority of judges on the Tax Court held that Mr. Stolk's Chappaqua residence did not qualify as his old residence under Section 1034 (because they believed he had "abandoned" it in 1953) and that the Virginia farm did not become his principal residence immediately following the 1955 transactions. Four judges and the Court reached the opposite conclusion on both issues and joined in a sharp dissent. Significantly, both the majority and the minority, in discussing the status of the Virginia farm, equated with the term "principal residence"

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with the traditional concept of "home". Judge Harron, for the majority, relied on Webster's Dictionary in defining "principal residence" as the "chief" place "where one actually lives or ^{7/} has his home." Applying this standard to Mr. Stolk's situation, ^{8/} Judge Harron said:

The apartment in New York was where he lived and made his home in the ordinary and customary meaning of the term "principal residence." It was the home to which he returned from business and vacation trips, which was his address for voting purposes, and where he intended to live for a period of several years until he is eligible to retire in 1955, which will be about 10 years after the time of purchase of Eden Farm.

Judge Fay, speaking for the minority, concluded that the Virginia ^{9/} farm was Mr. Stolk's home upon consideration of

the petitioner's reasons for renting and maintaining the New York apartment, the nature of the apartment in view of petitioner's income and position, the circumstances surrounding the acquisition of the farm, the reasons for its acquisition, the furnishing of it with the Chappaqua furniture and the fact that petitioner and his wife traveled to the farm every weekend and holiday. . . .

As in the Stolk case, the key to determining whether San Clemente or the White House was the Nixon's principal residence

^{7/} 40 T.C. at 351 (emphasis added).

^{8/} Id. at 356 (emphasis added).

^{9/} Id. at 359.

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following the sale of their New York apartment is the concept of what in their eyes was home. Whereas the Stolk family members decided on their own volition that they preferred to spend the majority of their time in a penthouse apartment which they furnished and equipped themselves, the Nixon family made no such decision with respect to the White House. As Chief of State, the President is required by custom to live in the Executive Mansion; this does not constitute it his home, however. More accurately, the White House is at once the nerve center for the Executive Branch and a museum and repository for the national heritage.^{10/} The President must live and work there, but by custom he is not free to furnish it or otherwise to introduce the countless personal touches which transform a residence into a home.

^{10/} The custom of treating the White House as a museum is reflected in the following provision of Title 3 of the U.S. Code (3 U.S.C. §110):

All furn'ture purchases for the use of the President's House shall be, as far as practicable, of domestic manufacture. With a view of conserving in the White House the best specimens of the early American furniture and furnishings, and for the purpose of maintaining the interior of the White House in keeping with its original design, the Director of the National Park Service is authorized and directed, with the approval of the President, to accept donations of furniture and furnishings for use in the White House, all such articles thus donated to become the property of the United States and to be accounted for as such.

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Recognizing the traditional constraints on life in the White House, the Nixons sought to establish their home, as the Johnsons and Kennedys and other Presidential families did before them, in a place where they had their roots. Unlike the Stolk family, which was not concerned about location, the Nixons wanted their home to be in Southern California, where the President had been born, and where he and the First Lady had been educated, made friends, and lived for much of their lives. On finding the Cotton estate, they furnished it with those of their furnishings and personal effects which they could feasibly move to the West Coast and gave most of what remained to their daughters. Also unlike the Stolk family, which used its farm only on weekends, the Nixons have lived in their San Clemente home for large, continuous blocks of time every year. Moreover, they have not treated San Clemente simply as a vacation home; the President has established an adjacent office complex and spends much of his time in California working on affairs of State.

In sum, while Stolk was a borderline case, this one is not. In every sense of the word, San Clemente has been the Nixons' principal residence and home since they purchased it in 1969. They reside in the White House, but it is more a part of the national heritage than it is the President's home.

The foregoing conclusion is not affected by the recent decision of the California Franchise Tax Board, which held that the Nixons were not subject to California income tax for the years 1969 through 1973. The Board specifically found that

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the President and First Lady were California domiciliaries during this period but that they had no tax obligation as residents because they were outside the State for more than a "temporary or transitory purpose." The same conclusion would obviously apply to military personnel and other federal government employees who were required to spend much of their time away from home.

IV

CONCLUSION

For all of the reasons stated, the undersigned attorneys for President Richard M. Nixon respectfully urge this Committee to confirm the validity of his and the First Lady's nonrecognition of the gain on the sale of their New York apartment. .

Respectfully submitted,

Kenneth W. Gemmill

H. Chapman Rose

Attorneys for President
Richard M. Nixon

Dated: February 19, 1974

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March 22, 1974

Mr. Arthur Blech
Arthur Blech & Company
5900 Wilshire Boulevard
Suite 750
Los Angeles, California

Re: Development Analysis..
La Casa Pacifica
4100 Calle Isabella
San Clemente, California

Dear Mr. Blech:

In response to your request of March 14, 1974, I have reviewed the attached map entitled "Preliminary Study Plan," dated March, 1974, and prepared by South Coast Engineering Service for the Internal Revenue Service, and a document entitled "Raw Land Value by Subdivision Approach -- West Coast Property," prepared by Arthur C. Shipley, Jr., with Mr. William Ayres of South Coast Engineering Service and with Mr. Eugene Shulte, San Clemente City Planner.

The purpose of this review was to comment on the adequacy of the projected development potential, primarily of the Homesite parcel, as it relates to City of San Clemente Subdivision Ordinance No. 429, adopted April 1, 1964, in effect during 1969 and 1970, and to further comment upon the land development costs projected by Mr. Shipley.

The results of this review may be summarized as follows:

- 1) This preliminary study plan is predicated upon development of two separate, individual land ownerships under a simultaneous unified development.

It is not based upon the concept of independent development of either the Homesite parcel or of the Excess Land parcel, and would not, in fact, permit such independent development.

Mr. Arthur Blech

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- 2) This plan was prepared to achieve maximum density, which is typical of a developers preliminary proposal to a governmental agency, knowing that some cutbacks in density are inevitably required.
- 3) The street running southerly of the intersection of extended Calle Isabella and Calle Marlana is centered along the north and east Homesite parcel boundaries. It could not serve as access for either the 13 Homesite parcel lots or for the 29 Excess Land parcel lots under the independent development of either parcel. Relocation of this street on Homesite parcel land only would eliminate at least two of the lots fronting thereon. Relocation of this street to the Excess Land parcel would require complete revision of the development proposal.

Therefore, the only access to the Homesite parcel under an independent development, is over extended Calle Isabella which provides existing access thereto.

- 4) The 42 lots located southerly of the intersection of extended Calle Isabella and extended Calle Marlana, and which front upon some 2,000+ lineal feet of cul-du-sac streets are in violation of Section 3.20 of the San Clemente Subdivision Ordinance which permits a maximum of 750 lineal feet of cul-du-sac serving a maximum of 24 lots.

Extension of the cul-du-sac located on the Homesite parcel to connect with extended Calle Marlana would eliminate one lot therefrom (Lot 56), as well as one lot from the Excess Land portion (Lot 16). Extension of this cul-du-sac would also accommodate the undesirable sewer easement between Lots 55 and 56, and Lots 15 and 16.

- 5) Excess Land Lots 12, 13 and 14 would not be permitted to front on the 40' wide single access Calle Ariana due to its substandard width under the San Clemente Subdivision Ordinance, the slope at which it runs and the five perpendicular streets which terminate into it.

Mr. Arthur Blech

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- 6) The four lot categories as set forth in the South Coast Engineering Service Report do not meet the elevation requirements of the same lot categories of the Cypress Shores Tract No. 4202, in that the 2nd Floor View lots are at the same elevation as 2nd Terrace lots, rather than at the 15' higher elevation of Cypress Shores 2nd Floor View lots over its 2nd Terrace lots.

By reason of the above inadequacies, the Preliminary Study Plan, would be unacceptable to the City of San Clemente from the standpoint of two unrelated development plans.

My analysis of the Author C. Shipley, Jr., "Raw Land Estimate" as submitted previously under a 74 lot development potential and as resubmitted under the 62 lot development potential prepared by South Coast Engineering Services, projects the following comments:

- 1) Although the Homesite portion of the property is substantially improved, Mr. Shipley makes no allowance in his development cost analysis for demolition costs, which may reach \$12,000 to \$15,000 over any possible salvage value, which will be incurred in clearing the land for redevelopment.
- 2) Mr. Shipley, in his initially submitted study, states finished lot sales prices of \$45,500 for ocean-view, \$30,000 for 2nd Terrace and \$19,000 for non-view which he states were developed from Cypress Shores Tract No. 4202 sales prices. In his resubmitted study, Mr. Shipley, using the same pricing basis, increases ocean-view lot sales prices to \$50,000 without explanation and adds a new category lot - 2nd Floor View - for lots which, through comparison with Tract No. 4202, do not so qualify.

The market must support one price or the other - not both, and any deviation from one report to the other should have been explained.

- 3) The updating to 1969, of the 1961/62 development costs of the adjacent Cypress Shores Tract No. 4202 is entirely unreasonable. Costs incurred in developing a 110 lot subdivision of 60' wide lots and 40' wide streets in 3 tiers of increasing elevation cannot realistically be utilized in estimating the development cost of a 60± lot subdivision requiring 70' wide lots and 50' wide streets, some 7 to 8 years later.

Mr. Arthur Blech

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- 4) Unit costs of earth moving, compaction, street construction, and utilities installation vary considerably with the scope of the job; hence the unit costs (cost per lineal foot of curb, water, sewer, or the cost per square foot of street or sidewalk, or the cost to cut or compact a cubic yard of earth) incurred in developing the 110 lot Cypress Shores Tract No. 4202 would be lower than in developing the 62 lot "Preliminary Study Plan" development.

Conversely, the unit costs for development of the 49 lot Excess Land portion of the "Preliminary Study Plan" would be slightly higher than those for development of the entire 62 lots, and the unit costs for development of the 13 lot Homesite portion would be considerably higher - by as much as 25% to 30% - than those for the entire 62 lots.

The only logical and accurate manner of estimating the development costs as they apply to the Homesite and Excess Land portions, is through an engineering analysis, whereby quantities for each portion are separately calculated and costed.

- 5) Comparison between the previously submitted 74 lot development cost and the current 62 lot development cost analyses submitted by Mr. Shipley indicated:
 - a) Ocean view per lot development cost of \$9,234 has remained the same though the South Coast Engineering Service Plan proposes a single access street (as contrasted to the previous double access street) to serve this tier, and requires some 15,850 cubic yards of earth cut, effectively increasing ocean view lot costs by a total of some \$30,000, equivalent to \$2,142 per lot.
 - b) 2nd Terrace per lot development cost of \$6,572 has been increased by \$826 to \$7,398, even though the South Coast Engineering Service Plan indicates a need for some 13,250 cubic yards of compacted fill, costing some \$23,250 or \$1,550 per lot more than the initial study indicated.

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- c) 2nd Story View and non-view per lot development cost has been increased from \$4,316 to \$5,116, though development requirements as to grading, and street footage remain similar.

Any additional detail information or explanation required to further support or clarify these comments will be submitted upon your request.

Very truly yours,



Hugo C. Drumm, M.A.I.

HCD:rtk

Attachment

BOWDLE, BOOTH & DRUMM

Real Estate Appraisers and Consultants

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American Institute of
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March 8, 1974

100-7747

Mr. Arthur Blech
Arthur Blech & Company
5900 Wilshire Boulevard
Suite 750
Los Angeles, California

Re: Homesite Value Allocation
La Casa Pacifica
4100 Calle Isabella
San Clemente, California

Dear Mr. Blech:

In response to your request of February 25, 1974, I have inspected the above referenced property and analyzed Exhibit 10 of a Valuation Report prepared by Arthur C. Shipley, Jr., Appraiser, for the purpose of expressing my opinion as to the techniques used and the reasonableness of the conclusion set forth therein. This report should not be considered as an appraisal, but rather as an independent analysis of the development potential of the property limited to the confines of Gross Sales Price and Costs of Development and Marketing as set forth by Mr. Shipley in his report. My use of these figures is to be considered valid only for purposes of comparison within this report and should in no manner be construed to indicate my acceptance of, or agreement with them.

My investigation covered analysis of the Arthur C. Shipley report, interviews with Mr. Gene Schulte, San Clemente Planning Director and Mr. William Ayre, Civil Engineer familiar with both the subject property and engineer for development of adjacent property, analysis of the San Clemente Zoning Ordinance, and in particular the R1-B1 zone which controls development of the subject property, and of the San Clemente Subdivision Ordinance, as pertained to this property during 1969 and 1970, and detailed study relating to topography of the property and its development potential.

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As a result of these analyses, I have formed the opinion that the report of Mr. Shipley is unreliable due to:

- 1) Its reliance upon the 1961/62 development experience of the north-westerly adjacent Cypress Shores Tract No. 4202, which is in conflict with San Clemente Subdivision Ordinance No. 429, adopted on April 1, 1964, wherein:
 - a) 60' x 100' - 6,000 \square lots are no longer permitted - now 7200 \square
 - b) 40' wide streets serving a single tier of lots are no longer permitted - now 43' minimum width,with major unadjustable costs to relate to the subject property, such as variations in earth cut and fill operations, changes in grading requirements, greater road width requirements, larger lot size requirements, etc.
- 2) Its conflict with the San Clemente Subdivision Ordinance in respect to:
 - a) 40' wide streets, in that a street serving a single tier of lots may be 43' wide but all streets serving two tiers of lots must have a width of 50'.
 - b) Dead end streets, in that all dead end streets must terminate in a cul-du-sac turn around with a radius of 42', and that no dead end street may extend beyond a 750' length or serve more than 24 lots.
 - c) 60' wide bluff lots, in that 70' minimum frontage is now required except on sharp curves (must average 70') and double frontage lots.
- 3) Its conflict with normal subdivision planning in that:
 - a) It provides no interior street circulation within the development - all streets dead end at the Coast Guard Property, with no likelihood of extension.
 - b) His designation of the 14 second terrace lots as view lots when his plan has made no allowances for access or slope area. To provide a view, these lots would have to be elevated some 15 \pm ' above the first tier of lots and would require additional depth to provide for the land slope as well as a rear street at grade to provide access.

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c) The southerly most street into the property does not consider the elevation difference of some 35' between the drainage easement and the property.

4) The basic concept of considering an overall development plan which does not coincide with the homesite boundaries and hence projects numerous fractional lots, is neither a logical nor a valid manner in which to project an allocation of value between the homesite and excess lands.

The approach utilized was to consider the development potential of the homesite and of the excess land as completely independent entities, under two separate studies:

1) The July 15, 1969 date of purchase.

2) The December 15, 1970 date of sale.

It assumes that under any mode of development, access to the homesite would be required at the point where it is presently served by an extension of Calle Isabella.

The projected finished lot sales price, and all development costs herein utilized are those projected by Mr. Shipley in his report -- the same basic costs have been utilized in both studies so as to arrive at a meaningful comparison of homesite value allocation.

Land area herein considered is based upon maps prepared and acreages calculated by South Coast Engineering Services, located in San Clemente, California.

Parcel "A" - 4.516 acres (including 0.8164 acres of unuseable slope)

Parcel "B" - 1.4± acres beach -- undevelopable

Parcel "C" - 13.406 acres (including 1.1088 acres of unuseable slope)

Parcel "D" - 6.55± acres beach -- undevelopable

Parcel "E" - 2.95 acres -- all developable

Street - 1.843 acres Calle Isabella and Calle Ariana easements to

Drainage - 0.211 acres -- reserved from Tract No. 4202

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Enclosures to this report are as follows:

- Exhibit "A" - 21 photographs of the bluff area of the homesite and excess land cross-indexed to a map of the property showing the location of the photographs.
- Exhibit "B" - Topographic map of the property with all existing slope area in excess of 40% colored in yellow.
- Exhibit "C" - Study 1 Subdivision Map of the property projecting development potential of the Parcel "A" Homesite and the Parcel "C" Excess land.
- Exhibit "D" - Study 2 Subdivision Map of the property projecting development potential of the Parcel "A" Homesite and the Parcel "C" and "E" Excess land.

Based upon the above described investigation and analysis, my conclusion from Study 1, is:

Homesite Acreage, Parcel "A"	-	4.516 acres
Excess Land Acreage, Parcel "C"	-	13.406 acres
Homesite Net Raw Land Value	-	\$148,121
Excess Land Net Raw Land Value	-	537,601
Total Net Raw Land Value	-	<u>\$685,722</u>
% of Homesite Net to Total Net	-	21.6%
Allocable Homesite Value	-	\$269,472

based on Study 1 as of July 15, 1969

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Based upon the above described investigation and analysis, my conclusion from Study 2, is:

Homesite Acreage, Parcel "A"	-	4.516 acres
Excess Land Acreage, Parcel "C" and "E"	-	16.356 acres
Homesite Net Raw Land Value	-	\$148,121
Excess Land Net Raw Land Value	-	610,276
Total Net Raw Land Value	-	<u>\$758,397</u>
% of Homesite Net to Total Net	-	19.5%
Allocable Homesite Value	-	\$256,275

based on Study 2 as of December 15, 1970

I consider the above summaries to represent a fair comparative value analysis relating to the allocable value of the homesite under the July 15, 1969 purchase cost and the December 15, 1970 sale cost of the property, limited only by the scope of the assignment which permitted independent development of some facts which are real but which required acceptance of other factors which are artificial.

I hereby certify that, except as otherwise noted in this appraisal report, I have no present or contemplated future interest in the real estate that is the subject of this appraisal report, I have no personal interest or bias with respect to the subject matter of this appraisal report or the parties involved, to the best of my knowledge and belief the statements of fact contained in this appraisal report, upon which the analyses, opinions and conclusions expressed herein are based, are true and correct, this report sets forth all of the limiting conditions (imposed by the terms of my assignment or by the undersigned) affecting the analyses, opinions and conclusions contained in this report, this report has been made in conformity with and is subject to the requirements of the Code of Professional Ethics and Standards of Professional Conduct of the American Institute of Real Estate Appraisers of the National Association of Realtors, and no one other than the undersigned prepared the analyses, conclusions and opinions concerning real estate that are set forth in this appraisal report except those items specifically set forth therein.

Mr. Arthur Blech

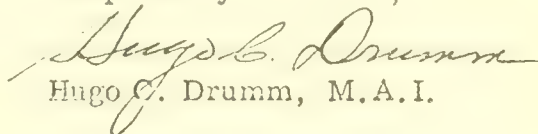
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Disclosure of the contents of this appraisal report is governed by the By-Laws and Regulations of the American Institute of Real Estate Appraisers of the National Association of Realtors. Neither all nor part of the contents of this report (especially any conclusions as to value, the identity of the appraiser or the firm with which he is connected, or any reference to the American Institute of Real Estate Appraisers or to the M.A.I. or R.M. designation) shall be disseminated to the public through advertising media, public relations media, news media, sales media or any other public means of communication without the prior written consent and approval of the undersigned.

The opportunity to have served you is appreciated.

Respectfully submitted,


Hugo C. Drumm, M.A.I.

HCD:dld

BASIC SAN CLEMENTE SUBDIVISION REQUIREMENTS
Basic San Clemente Subdivision Requirements

City of San Clemente Subdivision Ordinance No. 429, adopted April 1, 1964, which supercedes portions of the R1-B1 zone as it pertains to minimum lot frontages and which essentially states under its design and improvements aspect, as it affects the subject property:

- Sec. 3.02 - Minimum lot area of 7,200 Φ .
Average width of all lots, 50' back from street shall be 70'.
Minimum width of any one lot, 50' back from street shall be 60'.
Lots with front and rear street frontage may be 60' wide, at a point 50' from the front, and need not be included in overall average.
- Sec. 3.03 - Recontouring shall be permitted providing Sec. 3.02 minimums are adhered to and lot density does not exceed 4 lots per acre.
- Sec. 3.05 - Front property width may be reduced to 40' along outside of sharp curve (centerline radius under 100') or cul-de-sac; average lot width must be in accord with Sec. 3.02.
- Sec. 3.06 - 15' wide side yard easements (may be split between adjoining lots) and 15' wide rear yard easements (may be split between adjoining lots) must be granted for utilities.
- Sec. 3.13 - Existing streets as shown on the City of San Clemente General Plan shall be extended.
- Sec. 3.15 - Streets shall intersect at as near right angles as is practicable.
- Sec. 3.16 - Curb radius shall be a minimum of 25' at intersecting streets.
- Sec. 3.20 - Cul-de-sac streets shall serve not more than 24 building sites and shall not exceed 750' in length. Turn arounds shall be a minimum of 35' paving and right of way radius shall be determined by width of street which it terminates. (City Planning Director states 35' radius at curb which would project a 42' radius for a 50' street and a 39.5' radius for a 43' street.)
- Sec. 3.22 - Street widths for dual access streets shall be 50' (36' paving with 3' parkway and 4' sidewalk each side). Street widths for single access streets shall be 43' (34' paving with 2' parkway one side, and with 3' parkway and 4' sidewalk on the other).
- Sec. 3.27 - Minimum curve radius of 150' for collector and 75' for local.
- Sec. 3.28 - Minimum grade - 0.5%
Maximum grade - 15.0%
except on curves with radius under 200' - 7.5%.

GROSS LOT VALUES AND DEVELOPMENT COSTS

The Robert C. Shipley Jr. report sets forth the following Gross Lot Values and Development Costs:

Lot Type -	Ocean View	2nd Terrace	Non-view
# Lots	17	14	43
Gross Sales Price	$\frac{\$773,500}{17} = \$45,500$	$\frac{\$420,000}{14} = \$30,000$	$\frac{\$817,000}{43} = \$19,000$
Development Cost	\$156,978	\$ 92,008	\$185,568
Carrying Cost	75,669	41,087	79,924
Cost of Sales	77,350	42,000	81,700
Entrepreneur Profit	<u>116,025</u>	<u>63,000</u>	<u>122,550</u>
	$\frac{\$426,022}{17} = \$25,060$	$\frac{\$238,095}{14} = \$17,007$	$\frac{\$469,762}{43} = \$10,925$
Net to Raw Land	<u>\$20,440</u>	<u>\$12,993</u>	<u>\$ 8,075</u>

STUDY NO. 1 ALLOCATION OF HOMESITE AND EXCESS LANDS COST

STUDY NO. 1 - ALLOCATION OF HOMESITE AND EXCESS LANDS COST

Parcel "A" - Homesite - 4.516 acres
 Parcel "C" - Excess - 13.406 acres
 considered as separate entities

	Total Lots	1st Tier Full View Lots	2nd Tier Limited View Lots	Non-view Lots
Total Lot Potential, Parcel "A" & Parcel "C"	58	14	9	35
Lot Allocation -				
Parcel "A" - 4.516 acre Homesite	11	4	2	5
Gross Sales Price/Lot		\$ 45,500	\$ 30,000	\$ 19,000
Cost to Develop & Market/Lot		25,060	17,007	10,925
Net to Raw Land/Lot		\$ 20,440	\$ 12,993	\$ 8,075
		x 4	x 2	x 5
Total Net, All Lots	\$148,121	\$ 81,760	\$ 25,986	\$ 40,375
Parcel "C" - 13.406 acres Excess	47	10	7	30
Gross Sales Price/Lot		\$ 45,500	\$ 30,000	\$ 19,000
Cost to Develop & Market/Lot		25,060	17,007	10,925
Net to Raw Land / Lot		\$ 20,440	\$ 12,993	\$ 8,075
		x 10	x 7	x 30
Total Net All Lots	\$537,601	\$204,400	\$ 90,951	\$242,250
Total Net All Lots, Parcel "A" & Parcel "C"	\$685,722			
$\frac{\text{Total Net Parcel "A"}}{\text{Total Net Parcels "A" \& "C"}} = \frac{\$148,121}{\$685,722} = 21.6\% \text{ of the Total Value to Parcel "A"}$				

7-15-69 Parcel "A" and "C" Purchase Date Cost = \$1,400,000

21.6% Allocable Value of Parcel "A" = \$ 302,400 \$302,400

Residual Allocable Value to Parcel "C" = \$1,097,600

Plottage Increment of 3% to Excess Land = \$ 32,928 (\$ 32,928)

Allocable Cost to Excess Land as of 7-15-69 = \$1,130,528

ALLOCABLE COST TO PARCEL "A" HOMESITE AS OF 7-15-69 \$269,472

STUDY NO. 2 ALLOCATION OF HOMESITE AND EXCESS LANDS COST

STUDY NO. 2 - ALLOCATION OF HOMESITE AND EXCESS LANDS COST

Parcel "A" - Homesite - 4.516 acres
 Parcel "C" & "E" - Excess - 16.356 acres
 considered as separate entities

	Total Lots	1st Tier Full View Lots	2nd Tier Limited View Lots	Non-view Lots
Total Lot Potential, Parcels "A", "C" & "E"	67	14	9	44
Lot Allocation -				
Parcel "A" - 4.516 acre Homesite	11	4	2	5
Gross Sales Price/Lot		\$ 45,500	\$ 30,000	\$ 19,000
Cost to Develop & Market/Lot		25,060	17,007	10,925
Net to Raw Land/Lot		\$ 20,440	\$ 12,993	\$ 8,075
		x 4	x 2	x 5
Total Net, All Lots	\$148,121	\$ 81,760	\$ 25,986	\$ 40,375
Parcels "C" & "E" - 16.356 acre Excess	56	10	7	39
Gross Sales Price/Lot		\$ 45,500	\$ 30,000	\$ 19,000
Cost to Develop & Market/Lot		25,060	17,007	10,925
Net to Raw Land/Lot		\$ 20,440	\$ 12,993	\$ 8,075
		x 10	x 7	x 39
Total Net, All Lots	\$610,276	\$204,400	\$ 90,951	\$314,925
Total Net All Lots, Parcels "A", "C" & "E"	\$758,397			

$$\frac{\text{Total Net Parcel "A"}}{\text{Total Net Parcels "A", "C" \& "E"}} = \frac{\$148,121}{\$758,397} = 19.5\% \text{ of the Total Value to Parcel "A"}$$

12-15-70 Parcel "A", "C" & "E" Sale Date Cost	= \$1,500,000	
19.5% Allocable Value to Parcel "A"	= \$ 292,500	\$292,500
Residual Allocable to Parcels "C" & "E"	= \$1,207,500	
Plottage Increment of 3% to Excess Land	= \$ 36,225	(\$ 36,225)
Allocable Cost to Excess Land as of 12-15-70	= \$1,243,725	
ALLOCABLE COST TO PARCEL "A" HOMESITE AS OF 12-15-70		<u>\$256,275</u>

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April 4, 1974

Kenneth Gemmill, Esquire
Attorney At Law
c/o H. Chapman Rose
1100 Connecticut Avenue
Washington, D.C., 20036

Re: Consulting Services
25± Acre Estate - La Casa Pacifica
4100 Calle Isabella
San Clemente, California

Dear Mr. Gemmill:

In response to your request of April 2, 1974, I have analyzed a report prepared by the engineering firm of V.T.N. Consolidated, Inc., dated March 27, 1974, entitled "Feasibility Study and Cost Estimates for Development of the 'Cotton Estate' Property, San Clemente, California", and signed by Ronald G. Wells, Senior Vice President, and an Appraisal Report prepared by Laurence Sando, M.A.I., Real Estate Appraiser, dated March 30, 1974, and entitled "25.888 acres of land on the ocean front in the southwest corner of the City of San Clemente and County of Orange, California", based in part upon studies set forth in the V.T.N. report.

These reports relate to the development feasibility, the development cost, and the estimated "Fair Market Value", of the above referenced property, by date of July 15, 1969.

It should be stated at this time, that I have not been requested to prepare an independent appraisal report on the subject property, nor have I been requested to form an independent opinion of its "Fair Market Value" as of any date, but that my function has been solely to analyze the above-stated reports for the purpose of commenting on their reasonableness. As such I have accepted, without independent verification, such facts and market data as are stated therein.

Kenneth Gemmill, Esquire

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I further certify that I have inspected the property herein described on several occasions, and that I have no present or contemplated future interest therein, nor have I any personal interest or bias with respect to the subject matter of this report or the parties involved. Disclosure of the contents of this report is governed by the By Laws and Regulations of the American Institute of Real Estate Appraisers of the National Association of Realtors. Neither all nor any part of the contents of this report (especially any conclusions as to value, the identity of the appraiser or the firm with which he is connected, or any reference to the American Institute of Real Estate Appraisers or to the M.A.I. or R.M. designation) shall be disseminated to the public through advertising media, public relations media, news media, sales media or any other public means of communication without the prior written consent and approval of the undersigned.

Conclusions developed from my analysis of the V.T.N. report are as follows:

- 1) Development potential consists of three studies, namely Planning Study "A", "B" and "C".

Analysis of these three studies, under the assumption that retention of the existing building improvements does not represent the "Highest and Best Use" of the property, eliminates Study "C" from detailed comment, as this study is based upon retention of those improvements.

Further analysis, under the stated criteria that "each portion of the property, the Excess Land Portion A and the Homesite Portion B must be capable of separate and independent development," eliminates Study "A" from detailed comment, as this study requires an extension of Calle Marlana, through a portion of Excess Parcel A, either easterly from Calle Ariana or westerly from extended Calle Isabella, as the access provision for Homesite Parcel "B".

Therefore, only Study "B", which provides Homesite Parcel B access over the existing Calle Isabella roadway has been considered to meet the stated criteria of "separate independent development of either parcel."

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2) Planning Study "B" projects certain conflicts with the City of San Clemente Subdivision Ordinance No. 429, adopted April 1, 1964 and in effect during 1969, namely:

- a) Lots 1, 2, 3, 4, 5 and 6 would not be permitted access from the 40' wide Calle Ariana because of its development as a single side access street, the downgrade at which it runs, and the five streets presently terminating therein, without a variance from the City of San Clemente. Due to the inherent traffic hazards created, the minimal probable requirement by the City would be the dedication and improvement of an additional 10' street widening of Calle Ariana.
- b) Extended Calle Isabella, through both Excess Parcel A and Homesite Parcel B has a 44' width, permitted for a single side access local hillside residential street, and all other streets have a 48' width which is permitted for local hillside residential streets. However, these streets do not fall into the category of "Hillside" as defined in the San Clemente Subdivision Ordinance as follows:
 - i) Hillside Street - any street where the cross slope of the land, of the property to be subdivided is more than fifteen (15) percent.
 - ii) Cross Slope - the average percentage of grade across the land measured from the highest point to the lowest point in the subdivision, prior to recontouring.

The subject land, exclusive of the actual bluff, generally rises from a 60' elevation at bluff edge to 80' inland on the west, a distance of some 600', projecting a slope of 1 foot in a 30.0' horizontal distance, or 3.3% and from a 70' elevation at bluff to a 78±' elevation inland on the east, a distance of some 300' projecting a slope of 1 foot in a 37.5' horizontal distance, or 2.67%.

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Therefore, reduction from the 50' wide local street requirement would be subject to the granting of a variance by the City of San Clemente. Denial of such variance would require some revision in lot design to meet minimum lot areas and would increase development costs through additional street construction.

- c) Extended Calle Isabella, southerly of its intersection with extended Calle Marlena, provides in excess of 1,000 lineal feet of cul-du-sac street, serving 32 lots. The San Clemente Subdivision Ordinance limits a cul-du-sac street to 750 lineal feet serving 24 lots.

Because this cul-du-sac street presents the only logical manner of subdividing Excess Parcel A, it is believed that the expectation of a variance approval would be reasonable. However, it is likely that the City of San Clemente would require an extension of the southerlymost subdivision street westerly to create a temporary cul-du-sac adjacent to Homesite Parcel B boundary, and a similar extension of the Homesite Parcel B street to create a temporary cul-du-sac adjacent to the Excess Parcel A boundary, to provide for future circulation within the property. This would create the loss of one Homesite Parcel lot and one Excess Parcel lot.

- 3) The development costs projected under Planning Study "B" set forth costs of \$282,953 for Excess Parcel A and \$128,128 for Homesite Parcel B.
 - a) Neither of these cost projections provides for contingencies, generally added to 10% of the total cost, exclusive of fees and engineering.
 - b) A single set of unit development costs (cost per square foot, per lineal foot or per cubic yard) are used for the 48 lot Excess Parcel A and the 14 lot Homesite Parcel B, even though these costs vary widely with the scope of the work done. V.T.N. has used 1969 cost averages and has not attempted to vary them on the basis of quantities. Hence,

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actual development costs of the 48 lot Excess Parcel A are overstated and of the 14 lot Homesite Parcel B are understated.

In summary, numerous variances would be required to develop in accord with Planning Study "B". Denial of any of these variances would tend to increase development costs and could well create a loss of several lots. Furthermore, inclusion of a factor for contingencies, and consideration of development quantities would tend to project a similar or slightly lower development cost for Excess Parcel A and a relatively higher development cost for Homesite Parcel B.

Conclusions developed from the Laurence Sando report are as follows:

- 1) Mr. Sando has included two value analyses in his report, based upon:
 - a) Planning Study "A" which develops a \$945,000 Excess Parcel A land value and a \$365,000 Homesite Parcel B land value, which he accepts as his final value opinion.
 - b) Planning Study "C" which develops a \$942,000 Excess Parcel A land value and a \$303,000 Homesite Parcel B land value and which he dismisses as not indicative of Highest and Best Use, because of improvement retention.

Mr. Sando dismisses Planning Study "B" stating the results would be less than for Planning Study "A", though Planning Study "B" and not Planning Study "A" meets the criteria of "separate and independent development" of the two parcels.

Utilizing Mr. Sando's procedures, but applying them to Planning Study "B" would result in a \$942,000 approximate land value for Excess Parcel A (\$3,000 decrease) and a \$355,800 approximate land value for Homesite Parcel B (\$9,200 decrease).

- 2) Mr. Sando bases his retail lot values on lot sales within the adjacent Cypress Shores development (see Tab - Cypress Shores Lot Sales, 1968-69) which, based upon the 1969 sales, project:

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- a) 1st Tier Bluff - \$746-\$775/F.F. or \$7.46-\$7.75/⌘ based on 60' x 100' usable pads, projecting \$44,760-\$46,500 lot prices.

Mr. Sando places retail prices of \$850/F.F. or \$8.93/⌘ average on the subject lots with usable pads averaging 8,560 ⌘, equivalent to \$76,500/lot. This price represents an increase of 11-14% above the Cypress Shores front foot price, or an increase of 15-20% over the Cypress Shores square foot price, with no market support provided. This further represents a price premium approximating \$12.00/⌘ for the 2,560 ⌘ of additional pad area.

- b) 2nd Tier View - \$467-\$583/F.F., or \$4.67-\$5.83/⌘ based on 60' x 100' usable pads, projecting \$28,020 to \$34,980 lot prices.

Mr. Sando places retail prices of \$533-\$571/F.F., or \$4.82-\$5.55 on the subject lots with usable pads ranging from 7,200 ⌘ to 8,300 ⌘, equivalent to \$40,000 per lot. These prices lie within an acceptable range as projected by the sales.

- c) Non View - \$300/F.F. or \$3.00/⌘ based on one 6,000± ⌘ lot sale, projecting an \$18,000 lot price.

Mr. Sando places retail prices of \$357/F.F. (\$3.47/⌘) on 27 Excess Parcel A lots with 7,210 ⌘ pads, equivalent to \$25,000/lot, retail prices of \$379/F.F. (\$2.96/⌘) on 10 Excess Parcel A lots with pads averaging 9,300 ⌘, equivalent to \$27,500/lot, and retail prices of \$408/F.F. (\$3.27/⌘) on 9 Homesite Parcel B lots, with pads averaging 8,844 ⌘, equivalent to an average price of \$28,889/lot.

These prices reflect a 19-36% increase in front foot price or 0-9% increase in square foot price.

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In general, lots of this type sell for a per site value, rather than a price per front foot or price per square foot, with little if any consideration given to variations in area. Furthermore, it is this appraiser's opinion that as lot width increases, front foot price remains relatively stable; as lot area and depth increase, square foot prices either remain stable or show a slight decrease, not an increase. Therefore, each site price must be established through comparison of front foot price and square foot price indicated by the market, with a final comparison from lot to lot.

In particular, there is no market support for increasing the unit prices projected by sales, which are undoubtedly at a peak due to the limited supply of remaining vacant sites in a land subdivision some 7 years old.

- 3) Mr. Sando includes in his report the detailed price and cost projections for Cypress Shores in 1961/62, whereby 10% of the retail sales price is allocated to sales and promotion, and 40% of retail sales price is residual to carrying costs, management, taxes, contingencies and profit. However, in his subject property analysis, some 7-8 years later, Mr. Sando reduces his sales and promotional cost to 7.5% of retail sales and considers 22% of retail sales price as adequate to handle carrying charges, taxes, management, contingencies and profit.

In the opinion of this appraiser, a 7.5% provision for sales and promotional cost on a property within a somewhat remote area is insufficient to cover the required advertising, sales commissions and closing costs.

- 4) Mr. Sando appears to have made no allowance in his analyses for the demolition cost which will be incurred in removing the existing swimming pool and building improvements.

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In summary, Mr. Sando has eliminated a value analyses based upon Planning Study "B" which is the only study which appears to meet the stated development criteria. He appears overly optimistic in his opinion of subject lot sales prices, and includes no market support for his upward adjustment. He appears slightly conservative primarily in his sales cost allowance.

In final conclusion, the factors of major disagreement may be summarized as follows:

- a) The lack of direct communication or preliminary review of a tentative development proposal between the engineer and the City of San Clemente, which logically would have eliminated some of the assumptions included in Planning Study "B", and which, in all probability would have resulted in a 47 lot Excess Parcel A and a 13 lot Excess Parcel B with slightly increased development costs.
- b) The lack of inclusion of a contingency fee in the Planning Study development cost estimates.
- c) The lack of differentiation in the Planning Study development cost estimates for unit cost charges between a 48 lot development and a 14 lot development.
- d) The lack of market support in adjusting unit sales prices to the subject property.
- e) The conservative sales and promotional costs utilized.

Each of these factors plays an important role in the overall valuation analysis, and should not simply be assumed without reasonable assurance of its acceptability or reasonable market documentation. Adjusting the Sando studies to compensate for these 5 major criticisms could lead to a reduction in excess of 25% of his Planning Study "A" Part A value conclusion and to a reduction in excess of 37% of his Planning Study "A" Part B value conclusion.

Kenneth Gemmill, Esquire


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April 4, 1974

Inasmuch as my analysis leads to five areas of major disagreement relative to the development potential and valuation of this property, it is my recommendation that there be a further verification covering each of these areas, and that the reports be amended based upon the results of these verifications prior to their final acceptance, in order that a truly realistic conclusion, rather than a hypothetical conclusion, be reached.

The opportunity to have served you is appreciated.

Respectfully submitted,



Hugo C. Drumm, M. A. I.

Encls. - Example
Qualifications

HCD:rtk

EXAMPLE

The effect which the use of unacceptable or unrealistic assumptions, or the use of averages rather than detail quantity analyses, or the use of erroneous, unrealistic or unsupported opinions, can have on a valuation study. This example is not to be construed as a valuation conclusion, but merely to show the necessity of more closely confirming the acceptability of engineering assumptions with the governing agency, of providing greater detail in development cost analysis and in documenting market data as it relates to a property under appraisal.

Parcel A Retail Sales, based on highest 1969 market prices:

•	8 ocean front lots		
	800' ocean frontage @ \$775		\$620,000
	3 lots some view		
	210' frontage @ \$583		122,430
	36 lots non view		
	<u>2,540' frontage @ \$300</u>		<u>762,000</u>
	47 lots		\$1,503,430
	Development Cost -	\$282,953	
	+ 10% contingency	<u>28,953</u>	<u>311,248</u>
			\$1,192,182
	Less 10% Sales Expense	-	150,343
	Less 7.5% Carrying Charge	-	112,757
	Less 15% Profit	-	<u>225,515</u>

Residual to Raw Land	\$703,567
equivalent to 13.422 Ac. @ \$52,419/Ac.	
19.822 Ac. @ \$35,494/Ac.	

a reduction of 25+% from the Sando Planning Study "A" conclusion.

Parcel B Retail Sales, based on highest 1969 market prices:

5 ocean front lots		
450' ocean frontage @ \$775		\$348,750
1 lot some view		
75' frontage @ \$583		43,725
7 lots non view		
514' frontage @ \$300		<u>154,200</u>
13 lots		\$546,675
Development Cost -	\$128,128	
+ 10% Increase (size)	<u>12,813</u>	
	\$140,941	
+ 10% Contingency	<u>14,094</u>	<u>\$155,034</u>
		\$391,641
Less 10% Sales Expense	-	54,668
Less 5% Carrying Charge	-	27,334
Less 15% Profit	-	<u>82,001</u>
Residual to Raw Land		\$227,638
equivalent to 4.516 acres @ \$50.407/Ac.		
6.056 acres @ \$37,589/Ac.		<u></u>
		\$931,205

a reduction of 37+⁰⁰/₁₀₀ from the Sando Planning Study "B" conclusion.

HUGO DRUMM RESUME

HUGO C. DRUMM
QUALIFICATIONS

Education

Educated in the public schools of Manitowoc, Wisconsin. Graduated in 1950 from the University of Wisconsin with a Bachelor of Science Degree. Majored in Light Building Industry, concentrating in Real Estate, Taxation, Economics and Construction.

Have completed a series of appraisal courses sponsored by The League of Wisconsin Municipalities on conjunction with The National Association of Assessing Officers.

Have successfully completed the American Institute of Real Estate Appraisers Case Study Courses I and II in 1960.

Have attended many seminars in appraisal techniques sponsored by the American Institute of Real Estate Appraisers, the Society of Real Estate Appraisers and the American Right of Way Association.

Military Service

Served with the United States Air Force from September, 1943 through December, 1945, with overseas duty in the Mariana Islands. Honorably discharged in December, 1945.

Appraisal Experience

Employed full time in real estate appraisal from June of 1950 to present. Experience has included a wide variety of types and classes of properties, including a high percentage of cases involving partial takings with consideration given to Severance Damage and Special Benefits.

June, 1950 to June, 1952 (2 years) - City of Two Rivers, Wisconsin.

June, 1952 to June, 1958 (6 years) - City of Manitowoc, Wisconsin.

This employment commenced as assistant to the Assessor and culminated as Deputy Assessor. The work consisted of appraisal of all types of real estate for assessment purposes, and included a continual comparison of actual market selling price to assessed valuation.

HUGO DRUMM RESUME

June, 1958 to April, 1963 (5 years) - County of Orange, California

Real Estate Appraiser with the Orange County Right of Way Department where approximately 96 appraisals covering:

- Agricultural acreage
- Residential acreage
- Residential lots
- Single-family residences
- Multiple-family residences
- Commercial sites
- Improved commercial properties
- Industrial acreage
- Industrial sites
- Watercourse lands

were completed for general county acquisition, the Orange County Flood Control District and the Orange County Road Department. The majority of these appraisals were for partial takings, and as a result, required analysis as to Severance Damage and Special Benefits.

Since April 1, 1963, have appraised on an independent fee basis and have completed appraisal assignments for the following clients:

Public Agencies

General Services Administration
State of California - Division of Highways, District 7

County of Los Angeles - Road Department
Flood Control District
Dept. of Parks & Recreation

County of Orange - Department of Real Property Services
Road Department
Flood Control District

City of Lakewood
City of Long Beach
City of Los Angeles
City of Pico Rivera

Downey Unified School District, Downey
Long Beach Unified School District, Long Beach
Palos Verdes Peninsula Unified School District, Palos Verdes
El Rancho Unified School District, Pico Rivera

Companies - Bowdle Company - Appraisers & Contractors
Brittain Industries, Inc.

First Charter Financial Corp. (Condemnation vs. Co. of L. A.)
First Church of Christ Scientist
First Western Bank & Trust Company
First National Bank of Denver, Colorado

Keystone Savings & Loan Assn. (Savings & Loan Commission)
Los Angeles Civic Auditorium & Exhibit Center Lease Co.
National Community Builders
Orange Savings & Loan Assn.

Pacific Electric Railway Company
Rocker Solenoid (Condemnation vs. Co. of L. A.)

Security First National Bank
Shell Oil Company (Condemn. vs. Metropolitan Water District)
Southern Pacific Company
Storey - Rickets Motors (Corporation Commission)
Southern California Rapid Transit District

United Properties of America
Union Oil Company - an apportionment, condemnation vs.
El Camino College, et al.
Western Community Builders

Attorneys - Baggot, Thomas (leasehold interest apportionment)
Cummins, White & Breidenbach (Air Industries Inc. Damage Suit)
DeMarco, Frank (Western White House)
Freiberg, Thomas A. (West Coast Trans. Condemn. by
Pasadena Redevelopment Agency)
Garret, K.R. (law firm holdings)
Goldstein, John R. (Condemnation vs. City of Hawthorne)
Halstead & Crocker
Holland, Robert
Kiguchi, Mark (Shinden Nursery Condemn. vs. Co. of L. A.)

McLaughlin & Irvin (damage suit against builders)
Nimocks, John R.
Sprague, Clarence
Sorenson, Royal (lessee's interest)
Vleerick, Howard (proposed 20-story office building)

Wyman, Bautzer, Rothman & Kuchel
(Stuart A. Benjamin for Retail Clerks Union Local 770)

Individuals -

Bates, Cameron
Bewley, Thomas G. (Rental Arbitration)

Elliott, John
Hernandez, Conrad B.
How, Floyd (Condemnation vs. City of Rolling Hills Estates)
Huseman, Donald J.

Jensen, John R., C.P.A.

Murata, Paul

Ortale, Al
Powell, Clifford
Prescott, John
Rooney, Dr. Robert (Rental Arbitration)
Smith, Donald
Stevenson, John (Condemnation vs. County of L.A.)

General -

American Institute of Real Estate Appraisers (M.A.I. Designation awarded 1965 - Certificate No. 3721).

Chairman	-	Candidate Guidance Committee	1967
Member	-	Professional Practice Committee	1967/68
Secretary	-	R.A. Designation Membership Committee	1968
Vice-Chairman	-	Professional Practice Committee	1969
Chairman	-	Professional Practice Committee	1970
Member	-	Professional Ethics Committee	1971
Chairman	-	Professional Ethics Committee	1972
Member	-	National Prof. Ethics Committee	1973

Society of Real Estate Appraisers - Senior Residential Appraiser (SRA Designation - 1963).

Director	-	Orange County Chapter	1965/66
Member	-	Education Committee	1964/65
Chairman	-	Ethics Committee	1964/65/66/67
Chairman	-	Legislative Committee	1967
Member	-	Ethics Committee	1969

American Arbitration Association - Member, Panel of Arbitrators.

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